

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 2889

Representative Mike Hawker

Alaska State Legislature



House Bill 219

Sponsor Statement

Session:

State Capitol
Juneau, AK 99801
907 465-4949 direct
800 478-4950 toll free
907 465-4979 fax

Interim:

716 W 4th Avenue
Anchorage, AK 99501
907 269-0244 office
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Member:

House Finance Committee
Legislative Budget
& Audit Committee

House District 32:

Eagle River
Anchorage
Rainbow
Indian
Bird
Girdwood
Portage
Whittier
Sunrise
Hope

"An Act relating to crimes and dangerous instruments."

House Bill 219 specifically permits felony prosecution for an assault involving strangulation or suffocation. Strangulation is one of the top five risk factors for domestic violence homicide and is the cause of ten percent of homicide deaths in the United States. Yet, many cases have not been prosecuted as felonies due to physical evidence requirements that may not be relevant in strangulation assaults.

Strangulation can cause life-threatening injuries without obvious external marks that can be photographed and presented to a jury as evidence of "serious physical injury," which is required by current statute for felony assault. Forensic science proves that even in some fatal cases of strangulation there is no external evidence of injury. The cause of death was determined during autopsy, when the chance to photograph and collect untainted evidence had passed.

Without visible injuries, many cases are tried as misdemeanors even though the victim was minutes from death. Unconsciousness can occur within ten seconds, followed closely by irreversible brain damage and death within five minutes. Lack of oxygen can also cause internal injuries, including brain damage, which can lead to death hours, days or even weeks after the crime.

When strangulation occurs in a domestic relationship, it is indicative of a high level of violence within the relationship. In recent years, strangulation has been identified as one of the most lethal forms of domestic violence – a domestic violence victim who has been strangled is nine times more likely to be killed than one who has not.

This bill recognizes strangulation as a serious life threatening assault warranting felony prosecution. I urge your support.



Municipality of Anchorage

4501 Bragov Street • Anchorage, Alaska 99507-1599 • Telephone (907) 786-8500 • <http://www.muni.org>



Mayor Mark Begich

Anchorage Police Department

March 17, 2005

Representative Mike Hawker
State Capitol, Room 434
Juneau, AK 99801-1182

Dear Representative Hawker,

I understand that a bill regarding strangulation has been introduced to the House of Representatives. Several of our Department members have been conferring with Tara Henry about what is being proposed. I would like to provide support for the passing of this bill.

The State of Alaska faces multiple challenges in combating the elevated rate of crimes involving sexual assault and domestic violence. All too often, we learn that some form of strangulation occurred during the commission of these crimes. Individuals who perpetrate this type of violence against another person are using it as the ultimate form of control. Through the use of one's hands or another object to impede normal breathing or circulation, they are sending a message to the victim that they control their life.

In recent years, we are becoming more aware of the prevalence of strangulation as well as the extreme danger associated. The Anchorage Police Department has proactively responded to this information by educating all of our officers about how to recognize and respond to these incidents. An imperative part of this response package involves the prosecution of those who perpetrate these crimes. The proposed change in statute regarding the definition of dangerous instrument would add greatly to the ease of both charging and prosecuting these suspects.

I appreciate your willingness to carry this through. If you require any assistance from the Anchorage Police Department, please don't hesitate to call me personally.

Sincerely,

Walt Monegan
Chief of Police

WM/ga

Community. Security. Prosperity.

THE
FOLLOWING
DOCUMENT(S)
ARE
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ORIGINAL
COPIES



Anchorage
Police
Department
Employees
Association

Phone (907) 561-7500
P.O. Box 230330
Anchorage, Alaska 99523
500 West International Airport Road
Anchorage, Alaska
www.apdea.org

March 17, 2005

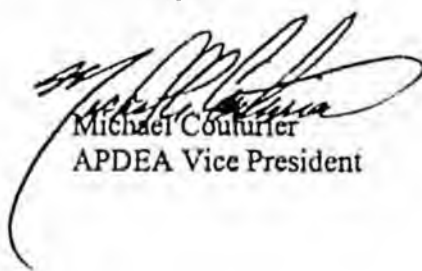
Re: HB 219

Dear Legislative Body:

The Anchorage Police Department Employees Association represents rank-and-file police employees in the Anchorage Police Department. I am writing to express the APDEA's full support for HB 219. There is presently an ambiguity in the law that has led to uncertainty by prosecutors as to how to charge the crime of strangulation. Unfortunately, this ambiguity has led to some of those who have committed this potentially life-threatening crime to receive lesser sentences than would otherwise be appropriate. HB 219 brings much needed clarity to this area.

I look forward to answering any questions you may have about HB 219.

Sincerely,


Michael Coufurer
APDEA Vice President

Columbus Dispatch (Ohio)

August 14, 2004 Saturday

Strangulation Cases; Seminar Explores Details Overlooked in Investigations

By Alayna DeMartini, *Columbus Dispatch*

The man called 911 with an odd complaint.

"She won't die," he told the dispatcher. "I've tried to kill her four different ways. She won't die."

But when medics arrived at the couple's home they found that the man had succeeded in strangling his wife.

The call to a 911 operator in Las Vegas was played yesterday for central Ohio police officers, prosecutors and emergency personnel during a training session on recognizing and prosecuting strangulation and attempted strangulation cases.

Too often the assailant walks away with little or no punishment because there aren't always marks left on the victim, said Gael B. Strack, a San Diego city attorney who led yesterday's seminar at the Franklin County Courthouse.

The victim may have serious injuries that aren't always apparent, such as internal fractures in the throat, Strack said.

"We understand when someone's stabbed, when their lip is cut, because we can see the signs," Strack said. "With strangulation, most victims will have internal injuries. It's easy to overlook, minimize or trivialize."

A study by the San Diego city attorney's office of police reports showed that if there was no visible sign of attempted strangulation, the assailant wasn't charged with a serious crime.

"We didn't understand what we had in front of us," Strack said.

The study, conducted in the late 1990s, showed that police often neglected to clearly document what symptoms victims were experiencing, Strack said. Cases that were prosecuted were charged as misdemeanors when many could have been felonies, Strack said.

Franklin County prosecutors estimate that 30 percent to 40 percent of the annual 6,000 domestic-violence cases in the county involve choking or strangulation, said Leslie Ashworth, director of the Columbus city attorney's domestic-violence unit.

Typically, victims of attempted strangulation will have red marks on the neck and a raspy voice, Ashworth said.

However, victims sometimes refuse to be treated at a hospital because they can't afford it, Ashworth said.

"Then you lose the evidence," Ashworth said.

Even when victims go to hospitals, they often minimize their injuries and do not blame them on others.

"The important thing is for everyone to realize that it's a potentially life-threatening matter and not say 'Oh, they were just choked,'" Ashworth said.

In Ohio, someone who tries to strangle a mate could be charged with domestic violence, which is a misdemeanor, or a felony such as felonious assault.

Some states have recently stepped up their domestic-violence laws and the penalties for strangulation attempts.

On Thursday, North Carolina Gov. Mike Easley signed legislation, "assault inflicting serious physical injury by (attempted) strangulation," a felony punishable by up to two years in prison.

An Oklahoma law that goes into effect in November makes it a felony to commit attempted strangulation on a domestic partner.

ademartini@dispatch.com

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**Women's
Justice Center**



**Centro de Justicia
Para Mujeres**

250 Sebastopol Rd. — Santa Rosa, CA 95407 — (707) 575-3150 — E mail: rdjustice@monitor.net

Domestic Violence Homicide Risk Assessment (data from USDOJ Scale)

**** Weapons ** Threats ** Strangling **
** Constant Jealousy ** Forced Sex ****

Note: The top five risk factors for domestic violence homicide usually don't bleed! In fact, these high risk factors often don't leave any visible marks at all.

The only sure way to determine the presence of these high risk factors is through careful, comprehensive victim interviews.

Ask & Document

The Top Five Risk Factors

The numbers in parenthesis indicate the factor by which a domestic violence victim's risk of homicide is increased relative to other domestic violence victims.

1. Has the abuser ever used, or threatened to use, a gun, knife, or other weapon against victim? (20.2x)
2. Ever threatened to kill or injure victim? (14.9x) Document complete and accurate quotes of the threats
3. Ever tried to strangle (choke) the victim? (9.9x)
4. Is abuser violently or constantly jealous? (9.2x)
5. Has abuser ever forced victim to have sex? (7.6x)

More Notes: *The US Dept. of Justice has now compiled a number of smaller studies into a lethality assessment list of 17 risk factors for domestic violence homicide. (The full lethality risk scale can be found at ww.ncjrs.org/pdffiles1/jr000250e.pdf Scroll to bottom of document.)*

The numbers in parenthesis indicate the factor by which a domestic violence victim's risk of homicide is increased relative to other domestic violence victims. For example, if the abuser has used or threatened to use weapons, the victim's risk of domestic violence homicide is 20.2 times that of the average domestic violence victim.

- ***Always Keep in Mind: All Domestic Violence Victims Are at Heightened Risk of Homicide.***
- *Don't dismiss threats to kill and maim as "just words". All victims should be asked about threats, and all threats should be quoted accurately and in detail. Also, threats to kill or maim are a crime in California, PC 422.*
- *Even victim advocates often fail to ask about sexual violence in the relationship. Sexual violence is serious trauma, and, is a high risk factor for domestic violence homicide. Don't be shy. Always ask!*

; USDOJ lethality scale deals only with factors inside the relationship. Other studies have found that factors outside the relationship - such as the quality of prior law enforcement or court response - correlate with future lethality. But again, the key to uncovering these risk factors is the same; a careful, comprehensive victim interview.

How You Can Help

Please pass this page on to health workers, teachers, clergy, counselors, friends, police, and neighbors... Or post it at your work, school, church or home.

Feel free to photocopy and distribute this information as long as you keep the credit and text intact.

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Women's Justice Center,
www.justicewomen.com
rdjustice@monitor.net



OPDV Bulletin:
Strangulation in Domestic Violence and Sexual Assault

"He choked me~ but there are no marks."

In 1999, the Clinton County District Attorney's Office and the New York Prosecutors Training Institute (NYPTI) hosted the nation's leading experts in the prosecution and investigation of strangulation cases. Assistant District Attorney Gael Strack and George McClane, MD, both from San Diego, California, presented their findings at the three-day conference, "Detection and Prosecution of Strangulation in Domestic Violence and Sexual Assault Cases," funded by the US Department of Justice Violence Against Women Grants Office and the New York State Division of Criminal Justice Services. The following is adapted from a condensed portion of their presentation.

"He choked me - but there are no marks." Strangulation has only recently been identified as one of the most lethal forms of domestic violence. When perpetrators use strangulation to silence their victims, this is a form of power and control that has a devastating psychological effect on victims and a potentially fatal outcome. Historically, "choking" was rarely prosecuted as a serious offense because victims minimize the level of violence and police and medical personnel fail to recognize it.

Strangulation is defined as a form of asphyxia and is characterized by closure of the blood vessels and/or air passages of the neck as a result of external pressure on the neck. It is often incorrectly referred to as choking which involves blocking, or obstructing the windpipe. Ten percent of violent deaths in the US each year are due to strangulation, with six female victims to every male.

Strangulation by ligature is done with a cord like object that could include anything from a telephone cord to articles of clothing. Manual strangulation is done with the hands, forearms (as in the classic chokehold), or standing or kneeling on the victim's throat.

Clinically, a victim who is being strangled first experiences severe pain, followed by unconsciousness, and then brain death. The victim will lose consciousness by any one or more of the following: blocking of the carotid arteries (depriving the brain of oxygen), blocking of the jugular veins (preventing deoxygenated blood from exiting the brain), and/or closing off the airway, causing the victim to be unable to breathe. Only eleven pounds of pressure placed upon both carotid arteries for ten seconds is necessary to cause unconsciousness. If pressure is released immediately, consciousness will be regained within ten seconds. After 50 seconds of continuous oxygen deprivation the victim rarely recovers. To completely close off the trachea, three times as much pressure (33 lbs.) is required. For comparison purposes, it only takes 8 lbs. of pressure to pull a trigger on a gun.

Fifty percent of victims report symptomatic voice changes which may be as mild as simple hoarseness or a complete loss of voice. Many victims also report that it is difficult or painful to swallow. This is due to injury of the larynx cartilage and/or hyoid bone, a small horseshoe shaped bone in the neck. Difficulty getting a breath may be due to the hyperventilation that normally accompanies a terrifying event, but more importantly may be secondary to underlying neck injury. It is critical to know that breathing changes may initially appear to be mild, yet underlying injuries may kill the victim hours or days later due to decompensation of the injured structures. Involuntary urination and defecation often occurs. Officers

should inquire about such because victims may be embarrassed and reluctant to disclose these facts unless asked.

Visible injuries to the neck may include scratches, abrasions, and scrapes. Redness on the neck may be fleeting, but may demonstrate a detectable pattern. These marks may or may not darken to become a bruise. Bruises may not appear for hours or even days. Chin abrasions are also common, as are tiny red spots called petechiae. These are caused by ruptured capillaries and may be found around the eyes, under the eyelids, anywhere on the face, and on the neck above the area of constriction. Blood red eyes are due to capillary rupture in the white portion of the eyes. This phenomenon suggests a particularly vigorous struggle between the victim and assailant.

In 70 to 80 percent of all domestic violence cases, the victim will recant. Therefore law enforcement should anticipate this and plan on prosecution based on the evidence, just like in a murder case. Efforts should be made to investigate the cases like an attempted homicide case. It is important to ask as many questions as possible at the earliest time possible. For specific questions and checklists to assist in detecting and investigating strangulation cases, go to

<http://www.correctionhistory.org/northcountry/html/knowlaw/strangulationinvestigation3.htm>.

Condensed by NYPTI, (518) 432-1100, the Continuing Legal Education and Mutual Assistance Division of the New York State District Attorneys Association. The points of view or opinions stated in this article are those of the particular author and do not represent the official position of the NYS Division of Criminal Justice Services. Information dealing with a specific legal matter should be researched in original and current sources of authority.

Note to Officers and Prosecutors: Treat Your Strangulation Cases Seriously

Start by using the word "strangle" as opposed to the word "choke." Strangle means to obstruct seriously or fatally the normal breathing of a person. Choke means having the windpipe blocked entirely or partly by some foreign object like food.

"How to Improve Your Investigation and Prosecution of Strangulation Cases" by Gael B. Strack, San Diego Assistant City Attorney and Dr. George McClane, Emergency Physician, October 1998, updated May 1999 is an excellent article. It can be obtained by request from Gael B. Strack at: Gael B. Strack at

Know the Law: Resource Materials on Strangulation

Strangulation Conference

On September 28-30, 1999, the Clinton County District Attorney's Office and the New York Prosecutor's Training Institute sponsored a conference on **Detection and Prosecution of Strangulation in Domestic Violence and Sexual Assault Cases**. Funding was provided by the United States Department of Justice Violence Against Women Grants Office and the New York State Division of Criminal Justice Services.

The leading experts on this subject, Assistant City Attorney Gael Strack of the San Diego City Attorney's Office and George E. McClane, M.D., Emergency Physician at Sharp Health Care in San Diego, came to Plattsburgh and conducted three days of training for more than 350 physicians, nurses, emergency responders, law enforcement, prosecutors, case workers and others.

"Strangulation" refers to the behavior of one person placing one or two hands around the neck of another person and squeezing or applying other pressure. This can kill.

We presented training on detecting and prosecuting strangulation because, in reviewing the Domestic Incident Reports (DIRs) filed by the police and interviewing victims, we repeatedly came across descriptions of the incident that included the complainant being choked - hands put on her throat, sometimes until she passed out! There might have been other physical violence, as well, sometimes not.

In examining this more closely, we found that in about 10% of the DIRs, choking was part of the specific incident. Reports made to the STOP Domestic Violence program by women, about 40% described "choking" as part of the abusive conduct at one or more points in their relationship.

Despite this frequency, rarely was there an arrest for the choking behavior. Seldom were there any marks or visible injuries seen by the police, and the victims themselves often described the choking aspect as minor in relation to the other violence used against them.

In New York, a person cannot be charged with criminal assault unless "physical injury" is actually caused. That is defined in the Penal Law as "impairment of physical condition or substantial pain." The choking cases did not really seem to meet this standard; it was understandable that the police did not make an arrest.

But, we wondered whether there were internal injuries caused by being choked - strangled - that did not leave outward visible signs. Or maybe the signs were there, but we did not know what to look for.

In our search for more information, we found some people around the state asking the same things, but no real answers. Eventually, through an internet search, we made progress. When the key word was "choking," it brought articles about medical conditions or choking on food. "Strangulation" first led to some guy's personal web page that suggested the sexual benefits of that conduct!

In refining the search to "manual strangulation," we came up with articles by pathologists, describing the evidence of strangulation found during autopsies. Hoping for someone who could identify such signs in living people who had been strangled, we pressed on and learned of Gael Strack and Dr. George McClane in San Diego.

We learned that they struggled with the same kinds of problems a couple of years earlier in San Diego, in cases that started with what looked like minor abuse, including choking, and led to homicide. As a consequence, they taught themselves and other law enforcement and medical personnel what to look for to detect whether injury was caused.

As a prosecutor, I know that I can only be effective if there is a good investigation. I depend upon the police, the EMTs, the nurses and doctors for the evidence I use in court.

We now realize that we may be overlooking serious crimes, because we did not know what to look for. The frequency with which manual strangulation is used in domestic violence incidents is surprising: in San Diego, in Plattsburgh, and very likely, everywhere else.

Because we all see it but have not known how to deal with it, we brought the experts from San Diego to train us. We want to learn how to better do our jobs; how to better protect our community.

The three days of training were outstanding - all we hoped for and more. The presentations of Gael Strack and Dr. George McClane are summarized in the New York Prosecutors Training Institute Newsletter which follows.



Forensic Nurses Association of Alaska

PO Box 771833
Eagle River, Alaska 99577

February 4, 2005

To Whom It May Concern:

The Forensic Nurses Association of Alaska supports the proposed statutory changes to include strangulation as a felony assault. Strangulation is a very serious, sometimes fatal physical assault that is commonly seen in domestic violence and sexual assault cases. When a person is being strangled, they are at a substantial risk for death. The victim becomes unconscious within seconds and death can occur within minutes.

It is well documented in the latest research that strangulation is one of the top five risk factors for a domestic violence homicide. Women who are strangled by an intimate partner are at a 9.9 times higher risk for being murdered by their partner than other women.

The State of Alaska leads the nation in the number of domestic violence homicides per capita. The proposed statutory changes that will include strangulation as a felony assault is a proactive approach to preventing domestic violence homicides, and is desperately needed in our state. In addition, the proposed changes will finally address this life threatening assault at the level of seriousness that it is.

The Forensic Nurses Association of Alaska fully supports and encourages this statutory change.

Sincerely,

Carol Odinzoff, RN
President
Forensic Nurses Association of Alaska

*Representing Alaska's Finest
Alaska State Troopers, State Fire Marshals, Court Service Officers, Airport Police and Fire
Officers, Juneau Police, Unalaska Police, Sitka Police, Fairbanks Police, Ketchikan Police,
and the Soldotna Police*



Political Action Committee

March 16, 2005

Representative Mike Hawker
State Capitol, Room 502
Juneau, AK 99801-1182

Re: HB 219

Dear Representative Hawker,

On behalf of the members of PSEA, I would like to thank for introducing HB 219. We believe HB 219 brings about a much-needed amendment to better define the criteria of what is a "dangerous instrument".

As a representative of Alaska's law enforcement officers, it is imperative that we have the necessary tools to ensure that Alaska's citizens are adequately protected. HB 219 will better assist law enforcement with the prosecution for those individuals who have committed such a horrendous assault.

PSEA hopes that the legislature will act swiftly on this matter and pass HB 219.

Sincerely,

Maurice I. Hughes Jr.
PSEA Vice President

4300 Boniface Parkway, Suite 116, Anchorage, Alaska 99504
Phone (907) 337-1979 Fax (907) 337-1753

From: lisa rea [lisadrew@alaska.com]
Sent: Tuesday, March 22, 2005 7:54 AM
To: Juli Lucky
Subject: Strangulation bill

Representative Hawker,

As a resident of Anchorage, a Public Health Nurse and a Sexual Assault Nurse Examiner I want to thank you for your support of house bill 219, strengthening the statutes to increase strangulation from a misdemeanor to a felony. This bill is an opportunity to recognize the seriousness of strangulation. If you have any questions about why I support this I can be reached at 349-9941.

Thank you
Lisa Rea, RN

HB

220

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB220CS(HES)-DHSS-DBH-04-11-05
 () Publish Date: _____
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction): _____

Title: MENTAL HEALTH PATIENTS RIGHTS AND CHOICE OF THE SEX OF STAFF PROVIDING CARE RDU Behavioral Health
 Component: Alaska Psychiatric Institute

Sponsor: GARA

Requester: HOUSE (FIN) Component No. 311

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation is intended to put into law the right of a patient who receives mental health treatment to request the gender of the staff person providing the patient's intimate care. In those cases when this request is not possible, a licensed staff person may provide the care. If that is not possible, the intimate care will be provided with documentation in the patient's record that the care was provided, but the patient's request was not possible. This reasonable and accomodating language provides the facility the flexibility needed and eliminates the previous requirement that licensed staff perform the care. Based on this revision, the Division expects no fiscal impact.

Prepared by: Bill Hogan, Director Phone: 907-465-3166
 Division: Behavioral Health Date/Time: _____
 Approved by: Joni S. Gilbertson, Commissioner Date: 04/11/2005
 Agency: Department of Health and Social Services

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: GSHB 220(HES)
 (H) Publish Date: 4/4/05
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title: MENTAL HEALTH PATIENTS RIGHTS AND CHOICE OF THE SEX OF STAFF PROVIDING CARE RDU Behavioral Health
 Component: Behavioral Hlth Medicaid Svcs
 Sponsor: GARA
 Requester: HOUSE (HES) Component No. 2660

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost:

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 220 is intended to put into law the right of a patient who receives mental health treatment to request the gender of a licensed staff person who will provide the patient's intimate care. In those cases where the patient is incapacitated, the intimate care is to be provided by a staff member who is the same sex as the patient except as provided in (c)(2) of the proposed bill.

The Department projects that this bill will have zero fiscal impact on this component.

Prepared by: Janet Clarke, Assistant Commissioner
 Division: Finance and Management Services
 Approved by: Joel S. Gilbertson, Commissioner
 Agency: Department of Health and Social Services

Phone: 465-1630
 Date/Time: 03/30/2005
 Date: 03/30/2005

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

SPONSOR STATEMENT

CSHB 220 (HES) – Mental Health Patient Privacy

HB 220 protects the personal privacy and safety of mental health patients. This legislation was prompted by the concerns of a former female mental health patient. Her specific concerns were the abuse of vulnerable patients and mental health patients' right to privacy.

This bill would allow a hospitalized adult mental health patient in Alaska to choose the gender of the person who provides them "intimate care" (bathing, toileting, changing, and dressing). If no person of the same gender is available, the care would be provided by a licensed staff member. If the institution is unable to comply with a patient's request or provide a licensed staff member, they will simply be required to document that in the patient's record. The bill also provides an exemption if compliance with a patient's request would adversely affect the patient's treatment plan.

Every Alaska citizen is entitled to dignity, respect and protection. I urge your support of this legislation.

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

SECTIONAL ANALYSIS CSHB 220 (HES) – Mental Health Patient Privacy

- Section 1**
- ◆ Allows a hospitalized adult mental health patient in a hospital with more than 10 mental health providers on staff to request the gender of the person who provides them intimate care.
 - ◆ A notice must be posted of the right to choose the gender of a provider.
 - ◆ If no provider of the gender specified is available, the care must be provided by licensed staff and this must be documented in the patient record.
 - ◆ If no licensed staff is available, this must also be recorded in the patient's record.
 - ◆ A hospital is exempt if complying with the patient request would adversely affect the patient's treatment.
 - ◆ Definitions.

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

MEMORANDUM

April 4, 2005

Explanation of Changes from Original Bill in CSHB 220 (HES)

Page 1, lines 5-10

Removed requirement for staff member to be "licensed."

Changed to a mental health patient over the age of 18.

Changed to a hospital that has more than 10 staff members to treat mental health patients on duty at the time of the patient request.

Page 1

Deleted requirement that if a patient is incapacitated, they be provided same-gender care. (old subsection (b))

Page 1, line 13

Deleted wording that required notices of policy to be placed in all patient rooms.

Page 2, line 3

Added that if the hospital cannot comply with the gender choice of a patient, the care should be provided by a *licensed* staff member.

Page 2, lines 5-8

Added exception for a hospital that cannot comply with a request and does not have a licensed staff member on duty.

Page 2, line 13-14

Added exemption if compliance would adversely affect patient treatment.

Page 2, lines 16-17

Added dressing and changing to definition of "intimate care."

Changes in CSHB 220 (HES)

Page 2

Page 2, lines 20-23

Added "nurse practitioners" under AS 08.68 and removed "natropaths" from the definition of a "licensed staff member."

Page 2, line 24

Changed definition of "mental health treatment" to a person who was admitted "primarily for" these types of treatment.

Page 2, line 28-29

Added definition of "staff member."

APR 5 2005

ALASKA MENTAL HEALTH BOARD

FRANK H. MURKOWSKI, GOVERNOR
STATE OF ALASKA

431 N. Franklin, Suite 200
Juneau, Alaska 99801
Office: (907) 465-3071
Fax: (907) 465-3079
www.amhb.org

April 4, 2005

Representative Les Gara
Alaska House of Representatives
State Capitol, Room 418
Juneau, Alaska 99501


Dear Representative Gara:

The Alaska Mental Health Board (AMHB) would like to clarify its position on HB 220. It became apparent, following the House Health Education and Social Services Committee hearing on March 31, 2005, that several committee members interpreted my testimony before the committee to indicate that the AMHB opposed HB 220.

The AMHB does not, in fact, oppose HB 220, which aims to create patient gender choice rights in statute. The Board's preferred course of action, which it initiated several weeks ago, to put in place appropriate gender choice policies in hospitals providing mental health is to work with the Division of Behavioral Health and the Alaska Psychiatric Institute to make the necessary changes in the policies and procedures of the institutions in question. The AMHB has not taken an official position on the bill. That should not be interpreted as opposition to the bill.

I appreciate the opportunity to clear up any confusion concerning the AMHB's position, both on the issue and HB 220. Thank you.

Sincerely,



Richard Rainery
Executive Director

Cc: Representative Peggy Wilson

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NAMI Anchorage

*Anchorage's Voice on
Mental Illness*

There is hope.

Trish McDonald
Executive Director

Yvonne Akai Evans
President

Eileen Davey
Vice President

Roger Branson
Secretary

Alina Blasiak
Treasurer

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Member at Large

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Yvonne Akai Evans
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yvon@aci.net

501 (c) non-profit
corporation in
Alaska since 1984

Faith Myers
Dorrance Collins
330 E. 14th Ave., Apt. E
Anchorage, Alaska 99501

27 February 2005

Dear Faith and Dorrance:

We here at the National Alliance for the Mentally Ill, Anchorage Affiliate (NAMI-Anch) have received and support your request for psychiatric patients to have the ability, through existing law and the most basic of privacy rights, to request gender specific intimate care. We further feel that these rights need to be clearly enunciated and that an addition to AS 47.30.840 reflecting such is in order.

We concur with and support the position Disability Law Center has taken in their letter to you dated December 22, 2004 and support their further involvement in resolving this matter of extreme importance.

It is telling to us that we rarely hear of this issue in private facilities where patients and their families have the freedom and ability to select other service providers. We understand that public institutions operate on limited resources, however this most basic of human rights, the right to personal dignity, is one that cannot carry a price tag but must be provided for in public as well as private facilities.

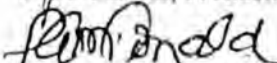
It is further troubling for us to realize that the staff making the majority of these decisions involving this most intimate of care are those who are the least trained. These staff members may well view their employment in the psychiatric care field as being transitory in nature and feel they have nothing or little to lose should a complaint regarding them be found to have merit. Our highest concern is that these individuals wield excessive physical and emotional power over these vulnerable persons and can too easily abuse the discretion given them to include suppressing complaints against them.

It is important to note that as State laws are currently being interpreted these basic rights to control who views and perhaps even touches our naked bodies may well be, and likely are being, violated without rising to the level of being a sexual assault or breaking any other laws. However, in this context, sexual assaults may well be, and quite possibly are being, committed with the vulnerable victim having little to no recourse, hope or even prayer of justice.

We urge our lawmakers to pass legislation which will protect individuals receiving this care.

Sincerely,


Yvonne Evans, President



Trish McDonald, Executive Director

Cc Ron Adler
David Fleurant



NAMI Alaska

144 W. 15th Avenue
Anchorage, AK 99501
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(800) 478-4462 (toll free)
www.nami-alaska.org
info@nami-alaska.org

February 28, 2005

Faith Myers
Dorrance Collins
330 E. 14th Avenue. Apt. E
Anchorage Alaska 99501

Re: Psychiatric Staff Gender Rights

Dear Ms. Myers and Mr. Collins,

NAMI Alaska supports your efforts to amend AS47.30.840 to include a section requiring the right of psychiatric patients to choose the gender of staff providing intimate care.

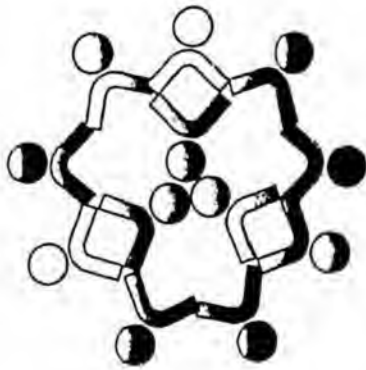
Many persons with mental health issues already have significant problems with trust and issues pertaining to their bodies. To give them the opportunity to select a same sex care provider may keep from re-traumatizing someone who has been physically violated or inappropriately touched in the past.

The right to chose a same-sex care provider while in a vulnerable mental state should be a state mandated right to provide the best possible care for psychiatric patients in Alaska.

Sincerely,

Beth LaCrosse
by Tracy Barbee

Beth LaCrosse, President



Alaska Mental Health Consumer Web

1248 Gambell St.
Anchorage, ALASKA 99501

Phone: 907.222.2980
Fax: 907.222.2981

March 2, 2005

Faith Myers
Dorrance Collins
330 E. 14th Ave., Apt. E
Anchorage, Alaska 99501

Dear Faith and Dorrance:

We at Alaska Mental Health Consumer Web would like to express our full support for your efforts to ensure the right of Alaskans undergoing mental health evaluation and treatment to choose the gender of their caregivers. Specifically, we wholeheartedly endorse the amendment of AS47.30.840 to include the right of Psychiatric patients to choose the gender of those that provide their care. It is our collective belief that this is not only a core human right, but also a matter of basic human dignity. For many years Alaskans have received care without regard to the gender of the provider. This practice has potentially violated the rights of thousands of Alaskan citizens and may have breached the boundaries of people who may have issues of sexuality and trust.

We again applaud your efforts and if I can be of further assistance please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carl Ipock".

Carl Ipock
Executive Director
Alaska Mental Health Consumer Web

March 1, 2005

Faith Myers,
Dorrance Collins
330 E. 14th Ave., Apt E
Anchorage, Alaska 99501

Re; Psychiatric Staff Gender Rights

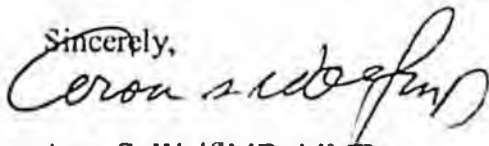
Dear Ms Myers and Mr. Collins,

I would very much support your efforts to amend AS47.30.840 to include a section acknowledging the right of Psychiatric patients to choose the gender of staff providing intimate care.

This is a very important issue as my Psychiatric inpatients already have significant issues with both sexuality and trust.

I believe that as a Physician this would be a significant step forward in providing the best and most therapeutic care for psychiatric patients throughout the State of Alaska. Please contact me if I can be of further assistance.

Sincerely,



Aron S. Wolf MD, MMD
Distinguished Life Fellow American Psychiatry Association

Alaska Counseling, Inc.
Parkway Professional Building II
4120 Laurel St., Suite 102, Anchorage, Alaska 99508
907.569.8600

PsychRights

LAW PROJECT FOR
PSYCHIATRIC RIGHTS, INC.

406 G Street, Suite 206, Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax
<http://psychrights.org>

January 3, 2005

Faith Myers
Dorrance Collins
330 E. 14th Ave., Apt. E
Anchorage, Alaska 99501

Re: Psychiatric Staff Gender Rights

Dear Ms. Myers and Mr. Collins:

The Law Project for Psychiatric Rights (PsychRights) unreservedly supports your efforts for legislative acknowledgment of the right for psychiatric patients to choose the gender of staff providing intimate care. We are outraged such a choice is not provided now. It is well known that many psychiatric patients (male as well as female) have been sexually assaulted or otherwise physically abused and that the failure to be sensitive to this issue is re-traumatizing and counter-therapeutic. Since the Alaska Psychiatric Institute is unwilling to recognize this and change its policy, a legislative directive is certainly in order.

PsychRights also concurs in the Disability Law Center's conclusion that Alaska patients already have such rights under the Alaska Constitution at least. If the 2005 Alaska Legislature fails to correct this outrage, I would encourage the Disability Law Center to pursue this through the courts.

Yours truly,



James B. (Jim) Gottstein, Esq.

cc: Ron Adler
David Fleurant



December 22, 2004

Faith Myers
Dorrance Collins
330 E. 14th Ave., Apt. E
Anchorage, Alaska 99501

Dear Faith and Dorrance:

I am in receipt of your letter wherein you request support from the Disability Law Center, Alaska's Protection and Advocacy agency for individuals with disabilities, in your efforts to secure "more rights" for patients at the Alaska Psychiatric Institute ["API"]. Specifically, you are advocating for a change in AS 47.30.840 that would, in effect, provide Alaskans undergoing mental health evaluation or treatment the right to choose the gender of the person providing them hands-on intimate care, such as toileting, bathing, diapering and dressing. You have asked the Disability Law Center to both confirm the legality of the requested statutory change and to voice support for your effort.

A review of statutory and judicial authority reveals a strong foundation of support for your legislative goal. In fact, securing the change in statute would not be bestowing 'more rights' onto patients, but would be a codification of an existing constitutional right that is not being acknowledged and protected. Based on this research, as well as common sense and decency, the Disability Law Center fully supports your effort.

It is clear that the State anticipates that some individuals admitted to API will require assistance with intimate care activities. The brief job description for a psychiatric nursing assistant that appears on the State's website describes the duties as follows:

Assist patients in occupational, recreational, and industrial therapy and school programs. Assist patients with daily routine activities *such as oral hygiene, preparing for meals, toileting, or preparing for bed.* Help with feeding of patients unable to feed themselves.

(Emphasis supplied). Acknowledging the need by some patients for this intimate assistance during a hospitalization, must these individuals submit themselves to care by a staff member of API's choosing, or do they have the right to choose the gender of the person viewing and touching their bodies? Do patients at API have a right to privacy?

Article I, Section 22 of the Constitution of Alaska provides that: "The right of the people to privacy is recognized and shall not be infringed." The specific enumeration of this right in Alaska's Constitution has been interpreted to

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SYSTEMS

mean that Alaska's right to privacy is broader than that afforded by the United States Constitution. *Messerli v. State*, 626 P.2d 81 (Alaska 1980).

Federal courts have clearly enunciated that encompassed within the right to privacy is the right to shield one's unclothed body from view. As the Ninth Circuit Court of Appeals held over forty years ago, "We cannot conceive of a more basic subject of privacy than the naked body. The desire to shield one's unclothed figure from view of strangers, and particularly strangers of the opposite sex, is impelled by elementary self-respect and personal dignity. *Story v. York*, 324 F.2d 450, 455 (9th Cir. 1963).

Many of the cases discussing this aspect of the right to privacy arose in the context of employment discrimination complaints against correctional facilities. These facilities were sued for restricting the gender of certain guard positions, in part, to protect the privacy rights of prisoners. The courts have held that this right is not destroyed simply because one is institutionalized. *Turner v. Safley*, 482 U.S. 78, 84. (1987) ("Prison walls do not form a barrier separating prison inmates from the protections of the Constitution."); *Robino v. Iranon*, 145 F.3d 1109, 1111 (9th Cir. 1998) ("[A] person's interest in not being viewed unclothed by members of the opposite sex survives incarceration.")

Most people, however, have a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the other sex may be especially demeaning and humiliating. When not reasonably necessary, that sort of degradation is not to be visited upon those confined in our prisons.

Lee v. Downs, 641 F.2d 1117, 1119 (4th Cir. 1981).

There are a few cases that address the employment of gender specific individuals in psychiatric hospitals. Courts have recognized that, unlike prison guards, hospital staff can infringe significantly on a patient's privacy rights. "Treatment assistants at a state psychiatric hospital intrude on patients' privacy by performing duties involving intimate personal care such as 'assisting patients with toileting, disrobing, showering and cleaning their genitals,' as well as stripping patients before placing them into restraints and conducting bed checks of patients who sleep naked or whose nightwear comes off during sleep. *Olsen v. Marriott International, Inc.*, 75 F. Supp.2d 1052, 1062 (Ariz. 1999) quoting *Jennings v. New York State Office of Mental Health*, 786 F. Supp. 376, 382 (S.D.N.Y. 1992).

Obviously most people would find it a greater intrusion of their dignity and privacy to have their naked bodies viewed (or any number of personal services performed) by a member of the opposite sex. Although there will be a certain relinquishment of privacy by necessity when anyone is admitted to a hospital or mental health facility, this is not to say that a patient has forfeited all rights to privacy.

Local 567 American Federation of State, County & Municipal Employees v. Michigan Council 25, American Federation of State, County & Municipal Employees, 635 F.Supp. 1010, 1013-14 (E.D. Mich. 1986) (footnote omitted).

The court in *Jennings* distinguished the privacy rights of patients from that of prisoners.

The patients at OMH are not convicted criminals but instead are there as a result of civil commitments. Thus, their right to privacy may not be abrogated by virtue of their confinement in a state-run facility unlike a prison inmate who has forfeited some rights in repayment to society. The patients at OMH are just that, patients. They are vulnerable and mentally ill. Basic decency demands that their privacy be respected to whatever degree feasible.

Jennings v. New York State Office of Mental Health, 786 F. Supp. At 384. The federal district court in Michigan held that not only should the psychiatric hospital respect the privacy rights of their patients, but should assist in protecting those rights.

It is obvious that the law recognizes the privacy rights of these patients or residents and that the defendants had the right to protect these rights, possibly even more so in the case of mental health patients who are far more reliant on the protection of the defendants than patients in hospitals. Moreover the failure to recognize their privacy rights is contrary to the concept of normalization which recognizes that mentally handicapped persons have a right to lives as close as possible to that which is typical for the general population.

Local 567 American Federation of State, County & Municipal Employees v. Michigan Council 25, American Federation of State, County & Municipal Employees, 635 F.Supp. at 1013. See also *Jennings v. New York State Office of Mental Health*, 786 F. Supp. at 383 ("[T]he fact that a person does not assert his or her constitutional right does not mean that state run facilities are still not obligated to respect these same rights.") "It would be a strange doctrine . . . that would decree that the sanctity of the right of privacy in the performance of the excretory functions, fully respected in a public restroom, is forfeited by the fact of falling ill and becoming hospitalized." *Local 567*, 635 F.Supp. at 1014.

Sensitivity towards the privacy rights of patients would also seem to further the treatment goals for many individuals. A large number of women and men have been sexually abused and live with the devastating aftermath of such experiences. Many with histories of maltreatment are extremely sensitive to issues of privacy and violation of their privacy. Early on in their lives their sense of body integrity was invaded by the behaviors of their perpetrators. Being exposed to the invasion of privacy while dressing, showering, or using the toilet can cause flashbacks in some individuals of prior abuse experiences. In others it can cause embarrassment and a sense of shame, even if they have no history of prior maltreatment. The need for a safe place where one is not exposed to the dominate

and submission process is imperative. The only way to make that possible is for people to have choices. Without choice there is a potential for the reenactment of trauma.

It is therefore possible that being viewed naked by staff of the opposite gender can cause significant harm to patients. A serious risk of harm violates the Eighth Amendment of the U.S. Constitution, even if no harm has yet occurred. *Farmer v. Brennan*, 511 U.S. 825 (1994); *Helling v. McKinney*, 509 U.S. 25 (1993).

For the reasons set forth above, the Disability Law Center of Alaska enthusiastically supports your efforts to protect the privacy rights of patients at API through the legislative process. Please do not hesitate to contact me if there is anything this agency can do to assist you with your advocacy.

Sincerely,

DISABILITY LAW CENTER OF ALASKA

A handwritten signature in black ink, appearing to read "David C. Fleurant", with a long, sweeping horizontal line extending to the right.

David C. Fleurant
Executive Director

cc Ron Adler

Dear Rep. Peggy Wilson, HESS committee chair

We are asking that HouseBill 220 be scheduled a H.E.S.S. committee hearing.---The Bill pertains to psychiatric patients in Alaska.

The leading psychiatric patients' rights organizations have supported advancing patients' rights through a bill (HB 220) and have written letters stating their support. Many of the organizations have 5 or more Board members who voted, and represent several hundred constituents.

Disability Law Center (a 4 page letter) decision to write support letter voted on in committee.

National Alliance for the Mentally Ill, Anchorage, a very powerful 1 page letter--decision to write support letter voted on by Board.

N.A.M.I. Alaska--a one page letter--decision to write support letter voted on by Board.

Alaska Mental Health Consumer Web (a one page letter) decision to write support letter voted on by Board.

Aron Wolf, M.D. MMD., a one page letter

Psych-Rights--a one page letter

With the state's leading psychiatric rights organizations asking that this issue be advanced---It would only be right that HouseBill 220 be scheduled to go into the H.E.S.S. committee hearing so it can be discussed and passed.

Many of the people writing the 7 submitted support letters, including myself, have either had the experience of being in an Alaskan psychiatric institution or have had family members in psychiatric institutions, and are speaking from the heart and experience that things need to be changed.

And we ask again that HB220 be scheduled for hearing in the H.E.S.S. committee to be discussed and passed.

Thank you,

Faith Myers
Derrance Collins

Faith Myers
Derrance Collins
330 E. 14th, Apt E.
Anchorage, Ak. 99501
(907) 929-0532

Rep. Les Gara

From: Jim Gottstein [jim@psychrights.org]
Sent: Tuesday, March 22, 2005 10:37 AM
To: Rep. Peggy Wilson
Cc: Rep. Les Gara; jim@psychrights.org
Subject: HB 220

Dear Representative Wilson,

This e-mail is to urge you to schedule a hearing on HB 220, which allows psychiatric patients a choice of gender for staff providing intimate care. Many psychiatric patients, including men, are the victims of sexual abuse and having intimate care provided by members of the same sex who committed the abuse can be very re-traumatizing. HB 220 addresses this basic right and I hope your committee will hear the bill and act favorably upon it.

Yours truly,

James B. (Jim) Gottstein, Esq.

Law Project for Psychiatric Rights
406 G Street, Suite 206
Anchorage, Alaska 99501
Phone: (907) 274-7686 Fax: (907) 274-9493
jim@psychrights.org
<http://psychrights.org/>

Psych Rights

Law Project for
Psychiatric Rights

The Law Project for Psychiatric Rights is a public interest law firm devoted to the defense of people facing the horrors of unwarranted forced psychiatric drugging. We are further dedicated to exposing the truth about these drugs and the courts being misled into ordering people to be drugged and subjected to other brain and body damaging procedures against their will. Extensive information about this is available on our web site, <http://psychrights.org/>. Please donate generously. Our work is fueled with your IRS 501(c) tax deductible donations. Thank you for your ongoing help and support.

BANGOR MENTAL HEALTH INSTITUTE

DATE: January, 2002

POLICY NO: 1-15

PAGE: 1 of 1

SUBJECT: Same Gender Care

It is the intent of Bangor Mental Health Institute to provide the same gender caregiver whenever requested by the patient while providing intimate care. We believe that by providing the same gender staff we are protecting patients' rights to privacy while treating them with dignity and respect. Refer to Nursing Procedure S-77A, Staffing Levels, for guidance in implementing this policy.

Mary Louise McEwen

Superintendent

Replaces policy dated March, 1999

BDS Bangor Mental Health Institute

Mary Louise McEwen, BSN, MBA
SUPERINTENDENT

Tel. (207) 941-4035

Post Office Box 926

Fax. (207) 941-4062

Bangor, Maine 04402-0926

E-mail marylouise.mcewen@maine.gov

*On page 1, 2 and 3
the policys clearly
state what actions
will be taken to fulfill
the patient's request
for gender choice
and notification
when it is not.
E.M.*

BANGOR MENTAL HEALTH INSTITUTE

**NURSING
DEPARTMENT**

DATE: April 2004

PROCEDURE: S-77A

PAGE: 1 of 2

SUBJECT: Staffing Levels

PERFORMED BY:

Director of Staffing Office and Nurse Supervisor

POINTS TO BE EMPHASIZED:

1. It is the Director of Staffing Office and/or Nurse Supervisor's responsibility to ensure that there are sufficient members of qualified nursing staff on each unit to provide care in a safe, efficient manner, while providing the same gender staff in the provision of intimate care if requested.
2. The approved staffing plan should not be altered because of difficulty in obtaining coverage. The number of patients in an area and the acuity of their needs including privacy must be the criteria assessed.
3. As the staffing schedules are revised and adjusted the CNM or assigned RN will have to adjust the patient assignment (modules) to ensure all patient care is properly delegated. Nurse staffing plans for each unit define the number and mix of nursing personnel. This basic staffing plan will contain a mix of LPNs and MHWs.

#Beds	Unit	7-3	3-11	11-7
17	DU	4 (plus 2 RN's)	4 (plus 2 RN's)	2 (plus 1 RN)
17	D-1	4 (plus 2 RN's)	4 (plus 2 RN's)	2 (plus 1 RN)
20	K-2	5 (plus 1 RN)	5 (plus 1 RN)	2 (plus 1 RN)
20	K-1	5 (plus 1 RN)	5 (plus 1 RN)	3 (plus 1 RN)

4. In assessing nurse staffing plans, Nursing Administration and the Director of Staffing Office give approval to the utilization of RNs, LPNs, and nursing assistants in the delivery of efficient and effective patient care.

PROCEDURE:

1. When providing intimate care to patients i.e. baths, changes, toileting, placement of strong gown, at least one member of the same gender must be present if requested by the patient to provide the "hands" on part of the care. If the same gender MHW is not available, the Staffing Office and/or the Nurse Supervisor should make an effort to provide the same gender MHW from another unit for the sole purpose of providing intimate care. If the Staffing Office and/or Nurse Supervisor is not successful in obtaining the same gender MHW, a licensed staff person will provide this care. It is expected that the Staffing Office and/or Nurse Supervisor shall be notified if this practice is not followed for patients who request same gender care.

BANGOR MENTAL HEALTH INSTITUTE

NURSING
DEPARTMENT

DATE: April 2004

PROCEDURE: S-77A

PAGE: 2 of 2

SUBJECT: Staffing Levels

2. Staffing may be adjusted upwards for one quarter of an hour up to a whole shift when:
 - a. Acuity rises
 1. Severely agitated patients
 2. Patients on special observation i.e., 1:1, 15 minute checks, medical observations, etc.
 - ~~—~~ * - b. Same gender privacy needs are required.
 - c. Special programming approved by Nursing Administration is occurring.
 - d. Staff participate in patient conferences and in-house educational offerings.
3. Staffing may be adjusted downward for one quarter of an hour up to a whole shift under the following conditions:
 - a. Acuity drops, which may result from:
 1. Drops in census
 2. Wellness of patients
 - b. Decrease in programming demands on weekends and holidays or after patients go to bed (staffing will at no time go below 2 per ward).
4. If the Nurse Supervisor or Director of Staffing Office is considering decreasing staff based on acuity, she/he must:
 - a. Assess the acuity on the unit in question by:
 1. Making rounds
 2. Reading reports
 3. Making patient assessments as needed
 4. Conferring with the Unit CNM, RN and /or Nursing Administration.
 5. Consulting with the PSD and CNM if considering a decrease in the number of RN's on D-U or D-1 from 2 RN's to 1 RN.
 - b. Determining the number of patients on unit (acute vs. non-acute) or when leave patients are expected to return.
 - c. Assess the impact on the building at large in the event of Code 88 calls, Dr. Stats, acute admissions, etc.
5. Nursing Administration will review this staffing plan in detail with staff input on an annual basis and as warranted by changing patient care needs, census, and standards.


Director of Patient Care Services

Original date: July 1990

API patients soon to get more rights

■ **TENACIOUS:** One former patient fights for practices that will promote healing.

By **LISA DEMER**
Anchorage Daily News

New policies and procedures born of the complaints of a former patient are gaining ground at Alaska's state mental hospital.

The changes at Alaska Psychiatric Institute stem from a push to expand patient rights and to end practices that the patient, Faith Myers, argued jeopardize healing.

ardize healing.

Myers, 52, has been hospitalized five times at API. She has schizophrenia.

After her most recent stay there last fall, Myers, along with her partner, Dorrance Collins, began raising concerns about male staffers working in women's living quarters, the inability of patients to pick treatment staffers of their own gender, and the hospital's complicated system for earning privileges, among other issues.

In all, they brought 19 specific complaints to the API governing board, the Alaska Mental Health Board, legisla-

tors, hospital inspectors and others.

The governing board provides oversight but normally does not investigate individual complaints. It created a grievance committee in April to handle Myers' concerns. The committee found that many were valid and recommended changes. On Thursday, the board accepted the committee's work and set deadlines for new policies and procedures.

"It's more than I ever thought I would get, but I still would like to see more," Myers said. She served on the committee along with Collins, current

and former API staff members, governing board members and an attorney with the Disability Law Center.

Myers' efforts will help the hospital improve, said Ron Adler, API chief executive officer. Staffers try to create a healing environment but the current, aging building can make that difficult, Adler said. A new hospital is being built on API's grounds and will be ready for patients by spring.

The governing board debated the grievance in a closed session because of confidential patient and staff information that was discussed, said Aileen

Smith, governing board chairwoman and a former API patient.

The board agreed that:

- API will create a written policy to prohibit staff members from routinely entering the living areas of opposite-gender patients. That has become the practice already, said Jane Barnes, API nursing director. Before, male staffers would go into women's bedrooms and bathrooms to, say, check on patients or perform housekeeping, and that traumatized and embarrassed women, Myers said.

See Page B-7, API

API: Former patient fights for and gets changes

Continued from B-1

ers said.

- The hospital should make every effort to allow patients to pick between a male or female doctor, therapist or off-ground staff escort. Myers had wanted patients to be given an absolute right to pick the gender of a staff member providing intimate care. She said she will seek legislation to accomplish that.

- API will rethink its system in which patients earn privileges, with a new system to be in place by 2004. Currently patients can gain privileges such as going to arts and crafts class or ordering out for food if they cooperate in treatment and function well. Different API units operate under different systems, and patients struggle to understand them. Adler said later that some hospitals abandon such systems altogether and work with each patient individually.

- Treatment documents must be legible and understandable. Patients had been labeled as uncooperative if they wouldn't sign a treatment plan because they couldn't read it or it contained jargon. Hospital medical director Duane Hopson was asked to issue a directive on legibility.

- All patients must be allowed a chance to go outdoors or, if the weather doesn't allow it, to the hospital gym. In the past, some patients were restricted to their living units because of safety or treatment issues. The medical team at API agreed with Myers that that wasn't a good practice and has begun to allow them to get exercise and fresh air, Adler said.

- Myers also had wanted hospital staff members to wear uniforms or at least vests so that patients could easily distinguish hospital employees from other patients, especially when someone is giving orders. Adler said the hospital will adopt a more professional dress code but uniforms look too institutional.

"I can promise you we are not going to go down that road," he said later.

Myers' concerns about privacy were especially important, said Edie Zukauskas, the Disability Law Center attorney who served on the committee at the request of the hospital and Myers.

Psychiatric patients are particularly vulnerable and often are not aware of their rights, she said. "We have been favorably

improved with APT's response to this grievance," she said.

At API, two-thirds of the psychiatric nursing aides, who provide most of the direct care, are men, as are three-quarters of the psychiatrists and psychologists. But most of the nurses and social workers are women. As of Friday morning, API had 60 patients — 36 men and 24 women.

Myers said many women patients have suffered from sexual abuse and may feel threatened anew in the hospital by male staffers.

One former API patient, Roalyn "Ross" Wetherhorn, told the governing board in April that she was sexually abused — fondled and propositioned — by a male staff member in 2000. She didn't report the abuse initially, she said in a telephone interview. The hospital addressed the problem recently, after she posted information on a mental health consumers online information network, Wetherhorn said. Adler seemed genuinely concerned, she said.

Since he came on board in March 2003, every complaint of sexual misconduct at API has been investigated and usu-

ally referred to police, Adler said. There are few such complaints each year and about as many are between patients as between staffers and patients, he said.

In the new hospital, patients will have private bedrooms and bathrooms. Their rooms also will be monitored so that if someone steps in unwanted, a nurse will know immediately, he said.

Myers said she was disappointed the hospital did not commit to putting more changes into written policy.

In the meantime, a suit filed on her behalf against the hospital is awaiting a state Supreme Court ruling on an appeal.

The suit aims to prohibit the hospital from forcing patients to take medication unless it can prove it is in their best interest. Myers has argued that it should be her choice and that she is now on an antipsychotic drug that helps her. A state Superior Court judge in a preliminary ruling sided with the hospital, and Myers has appealed.

■ Daily News reporter Lisa Demer can be reached at ldemer@adn.com and 757-4390.

Anchorage Daily News
July 26, 2004

Mental health patients could specify staff's sex

By LISA DEMER
Anchorage Daily News

Patients receiving mental health treatment in a hospital would have the right to pick the sex of staff members providing their intimate care, under a bill filed in the Alaska Legislature on Wednesday.

The measure is being pushed by Faith Myers, a former patient at Alaska Psychi-

atric Institute who has been raising concerns about patient rights and privacy there.

Some patients at API have suffered sexual abuse. They may feel especially vulnerable to and wary of opposite-sex caregivers, Myers said. One former patient said last year

See Page B-5, TREATMENT.

TREATMENT: *Same sex*

Continued from B-1

that she had been fondled by a male staffer in 2000.

Last year, API's governing board agreed to new policies and procedures to address some of Myers' concerns. If a patient requests it, at least one staff member of the same sex must be present if the patient needs help bathing, going to the bathroom or dressing, under a new procedure that Myers provided a copy of.

House Bill 220 goes further. It would grant mental patients in hospitals the right to request that hands-on care be given only by licensed staff members of the sex they specify. If a patient were incapacitated, care would be provided by someone of the same sex as the patient. If the hospital couldn't provide an appropriate staff member, that would be documented in the patient's file, under the bill.

"It's a matter of personal privacy and personal integrity,"

said state Rep. Les Gara, D-Anchorage and the prime sponsor. Six representatives have signed on as co-sponsors.

State Department of Health and Social Services officials haven't had a chance to review the bill but will do so soon, special assistant Sherry Hill said.

Myers and her partner, Dorrance Collins, said they support the bill but want to change it so that API wouldn't be able to get around the requirement for lack of licensed staff.

The Disability Law Center of Alaska, the mental health advocacy organization NAMI, the Anchorage-based Law Project for Psychiatric Rights, the Alaska Mental Health Consumer Web and psychiatrist Aron Wolf all have written letters supporting legislation.

"We are outraged such a choice is not provided now," attorney Jim Gottstein of the PsychRights law project wrote in January.

Anchorage Daily News
March 19, 2005

HB

225

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 225
 (H) Publish Date: 4/1/05
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title RELATING TO MEDICAL EXAMINERS AND DEATH EXAMINATIONS

RDU Public Health

Component State Medical Examiner

Sponsor MCGUIRE

Requester HOUSE (HES)

Component No. 293

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES (0)						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1094 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost:

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would amend current law to give the Deputy Medical Examiner the same authorities and duties as the State Medical Examiner. It also would add a mandate that the Commissioner "shall" appoint a Deputy Medical Examiner (current law allows that the Commissioner "may" appoint a Deputy M.E.), and clarifies that the Commissioner may appoint Assistant Medical Examiners.

The Governor's proposed FY06 operating budget for the State Medical Examiner's Office will support this proposed bill, as the budget includes funding for both the State Medical Examiner and the Deputy Medical Examiner positions. There currently are no Assistant Medical Examiners established and funded in the budget, but since this bill does not require the Commissioner to appoint Assistant Medical Examiners, no additional funding is required for this legislation.

Prepared by: Richard Mandsager, M.D.
 Division: Public Health
 Approved by: Joel S. Gilbertson, Commissioner
 Agency: Department of Health and Social Services

Phone: 465-3090
 Date/Time: 03/29/2005
 Date: 03/30/2005

ALASKA STATE LEGISLATURE

Session
State Capitol Building, Room 118
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
Phone (907) 269-0250
Fax (907) 269-0249



Chair
Judiciary Committee

Member
House Leadership
Rules Committee
Health, Education
& Social Services
Committee
Oil & Gas Committee
Military & Veterans'
Affairs Committee

REPRESENTATIVE LESLIE MCGUIRE
HOUSE DISTRICT 28

SPONSOR STATEMENT HB 225

"An Act relating to medical examiners and medical death examinations."

Last year alone, there were nearly 1,100 cases filed with the State of Alaska's medical examiner's office. All of these cases require responsibilities ranging from autopsies, administrative duties and legal responsibilities, such as testifying in court. With this sizeable caseload for our state, how many medical examiners do we have to handle it? The answer is, one.

Our one state medical examiner has been stretched so thin with this caseload that he has been forced to decide which cases will actually receive autopsies. Currently autopsies are required only when the death was suspicious or if there was a crime involved. When forced to pick and choose, something could be overlooked in these remaining cases that did not receive the attention they should have. We also have to consider what would happen if our one medical examiner became ill or for any reason could not fulfill his duties.

The position of the state medical examiner is a critical function in the state and a tremendous responsibility. It is a responsibility not only to the families and friends to the victim, but also to the community as a whole. The fact that there is such a large caseload for only one medical examiner has become a growing concern for policy makers, law enforcement officials and the community.

Under current state law, the commissioner of health and social services is required to appoint only a medical examiner. HB 225 would require the commissioner of health and social services to appoint both a chief medical examiner and a deputy medical examiner to share the extensive workload.

Suzanne Cunningham

From: Clarke, Janet E. [Janet_Clarke@health.state.ak.us]
Sent: Monday, April 11, 2005 7:00 PM
To: Amanda Ryder; Anna Kim
Subject: FW: FW: Deputy Medical Examiner
Importance: High

Amanda:
More follow-up on your questions on the subject of the Deputy Medical Examiner.
Janet Clarke

From: Smith, Robin
Sent: Monday, April 11, 2005 4:01 PM
To: Clarke, Janet E.; Lowenstein, Cheryl; Baker, Laura
Subject: RE: FW: Deputy Medical Examiner
Importance: High

Under AS 12.65.015 the Commissioner already has the authority to appoint a deputy medical examiner and assistant medical examiners. DPH previously had two deputy medical examiners (which is a working title, the job class is exempt staff physician in the SME budget) while the Chief Medical Examiner position was vacant. One of the incumbents was promoted to Chief on 6/24/04. After the promotion, the deputy position vacated by him was kept vacant due to funding limitations.

The other deputy resigned effective 11/30/04. That position is now being recruited. One of the three medical examiner positions in the SME component (chief and two physicians who are referred to as deputy medical examiners) is unfunded, but the division has sufficient funding to fill the chief and one deputy as is currently the plan regardless of whether HB 225 passes or not.

Hope this helps.
Robin

From: Amanda Ryder [mailto:amanda_ryder@legis.state.ak.us]
Sent: Monday, April 11, 2005 1:47 PM
To: Clarke, Janet E.
Subject: Re: FW: Deputy Medical Examiner

Thanks! Just a few more questions. How much (and what kind of) funding is needed for the Deputy Medical Examiner? Why are you hiring this position now and not waiting for the bill to pass? What happens if HB 225 does not pass? You stated that this funding is currently in the budget--is there something that will not be done because this position is being filled? In other words, what has the funding been used for? Thanks for your help.

Clarke, Janet E. wrote:

Amanda and Anna:
Here is the information as requested.
Janet Clarke

4/12/2005

DHSS

From: Smith, Robin
Sent: Monday, April 11, 2005 1:14 PM
To: Clarke, Janet E.
Cc: Baker, Laura; Lowenstein, Cheryl
Subject: Deputy Medical Examiner
Importance: High

I spoke to Cheri and she says we do not currently have a deputy medical examiner, but we are in the final process of hiring one. DPH has done second interview on one candidate and has another one flying up for second interview soon (possibly a third candidate, Cheri wasn't positive). In the budget we have the Chief position and 2 staff physician positions. The Deputy Medical Examiner currently in hiring process would fill one of those 2 physician positions. They don't currently have the funding to hire a second deputy ME into the remaining vacant position.

Let me know if you need additional info.

Robin

HB

225

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

MAY 5 2005

SENATE FINANCE
COMMITTEE

DATE: 4/28/05

FURTHER:

DATE TURNED
IN TO OFFICE: 5 May 2005

Finance Committee considered HOUSE BILL NO. 225

HB 225 MEDICAL EXAMINERS & AUTOPSIES

"An Act relating to medical examiners and medical death examinations."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous S CS CS HB 225 (HES)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#

Department	Date	Fiscal	Ind.	Zero	FN#
H&SS	7/30/05			✓	#1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>		✓		
COCHAIR: <i>[Signature]</i>			✓	

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 225
 (H) Publish Date: 4/1/05
 Dept. Affected: Health & Social Services

REPORTED OUT
MAY 5 2005
SENATE FINANCE COMMITTEE

Revision Date/Time (Note if correction):

Title: RELATING TO MEDICAL EXAMINERS AND DEATH EXAMINATIONS

RDU: Public Health

Component: State Medical Examiner

Sponsor: MCGUIRE

Requester: HOUSE (HES)

Component No.: 293

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES (0)						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

POSITIONS	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would amend current law to give the Deputy Medical Examiner the same authorities and duties as the State Medical Examiner. It also would add a mandate that the Commissioner "shall" appoint a Deputy Medical Examiner (current law allows that the Commissioner "may" appoint a Deputy M.E.), and clarifies that the Commissioner may appoint Assistant Medical Examiners.

The Governor's proposed FY06 operating budget for the State Medical Examiner's Office will support this proposed bill, as the budget includes funding for both the State Medical Examiner and the Deputy Medical Examiner positions. There currently are no Assistant Medical Examiners established and funded in the budget, but since this bill does not require the Commissioner to appoint Assistant Medical Examiners, no additional funding is required for this legislation.

Prepared by: Richard Mandsager, MD
 Division: Public Health
 Approved by: Jool S. Gilbertson, Commissioner
 Agency: Department of Health and Social Services

Phone: 465-3090
 Date/Time: 03/29/2005
 Date: 03/30/2005

ALASKA STATE LEGISLATURE

Session
State Capitol Building, Room 118
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Chair
Judiciary Committee

Member
House Leadership
Rules Committee
Health, Education
& Social Services
Committee
Oil & Gas Committee
Military & Veterans'
Affairs Committee

REPRESENTATIVE LESLIE MCGUIRE
HOUSE DISTRICT 28

SECTIONAL ANALYSIS IIB 225

Section 1 – Amends AS 12.65.015(a) by changing MAY to shall. This will require the commissioner of health and social services to not only appoint a state medical examiner but also a deputy medical examiner.

Section 2 – Amends AS 12.65.015(b) by adding the deputy medical examiner to the first line of the section. This also requires that both medical examiners must be physicians who have education and experience in forensic pathology.

Section 3 – Amends AS 12.65.015(c) by adding deputy medical examiner and requires that both examiners perform the duties assigned.

Section 4 – Amends AS 12.65.020(a) by adding the requirement that either the state medical examiner or the deputy medical examiner to perform death investigations when a death is reported to the state medical examiner's office. This section also adds deputy medical examiner to further responsibilities of the medical examiner's office.

Section 5 – Amends AS 12.65.020(b) by adding deputy medical examiner. By adding deputy medical examiner, it would require the state medical examiner and the deputy medical examiner to share the responsibility of preparing post examination reports and submitting those reports to the D.A.

Section 6 – Amends AS 12.65.020(c) again by adding deputy medical examiner to require that the state medical examiner and deputy medical examiner share the responsibility in court petitions and produce death certificates.

Section 7 – Amends 12.65.020(d) by adding deputy medical examiner to require that the state medical examiner and the deputy medical examiner share the responsibility in having a death certificate amended if in the opinion of the state medical examiner or the deputy medical examiner, the death certificate is inaccurate or incomplete

Section 8 – Amends AS 12.65.020(e) by adding the state medical examiner or deputy medical examiner to lines 28 & 29 to allow both medical examiners to have the option of calling upon public employees to assist in medical examination duties.

Section 9 – Amends AS 12.65.020(f) by adding the deputy medical examiner to the list of those who are immune from civil liability based on determining the cause and manner of a person's death.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

So many cases, just 1 skilled pair of hands

Thursday, March 3, 2005 - by Warren Williamson



Phil Walczak/KTUU-TV

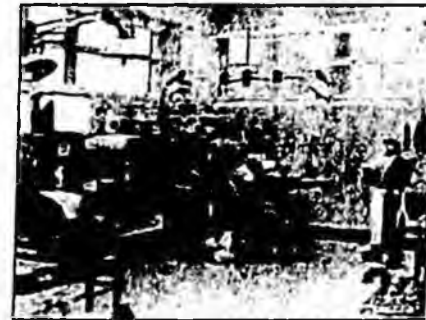
Anchorage, Alaska - It's considered one of the most modern medical examiner's offices in the country. Last year alone, nearly 1,100 cases were filed. At the helm of that office is Dr. Franc Fallico, who was appointed chief medical examiner in June 2004.

Fallico's day begins early -- he's at the office by 6:30 a.m. And his days are demanding. In addition to performing autopsies, Fallico must find time for administrative duties and legal

responsibilities, such as testifying in court.

"It's not too unusual for medical examiners to be very busy all across the country," Fallico says. "And their services are stretched because there are very few medical examiners that are fully qualified, and also funding is very difficult to come by now."

Stretched? Some say that's an understatement. Fallico is the only medical examiner in the state. To put that in perspective, it means Fallico is responsible for nearly 587,000 square miles of land -- that's one-fifth the size of the Lower 48.



Phil Walczak/KTUU-TV

"I'm hopeful that I'll have help soon," he says.

Fallico says he's not overworked and that he loves his job. But the question is who would perform the work if Fallico falls ill or if he was called out of town on a lengthy homicide investigation. Or if he goes on vacation.



Phil Walczak/KTUU-TV

"It's a good question, but no one's indispensable," he says. "For example, a person who trained me now works in Juneau. And this person, a fully qualified forensic pathologist, I'm sure in a pinch could be enticed to come up and do some work."

Fallico's time and duties are stretched so thin that he says he's forced to decide what cases receive autopsies. Fallico says not every death necessitates an autopsy,

except homicides and cases of mysterious deaths.

But Anchorage police say something could be missed if all cases aren't examined thoroughly.

"Sometimes it's criminal. Sometimes it's accidental. There's a lot of different ways that that could happen," says Lt. Kris Miller, the homicide unit commander for the Anchorage Police Department. "Obviously, we're going to be concerned with the criminal, but we need the assistance of the medical examiner's office frequently in determining whether it was truly criminal."



But Fallico says if he performed autopsies on every case, he wouldn't be able to keep up with the workload.

"There would be multiple bodies in this institution and we could not get the bodies out the door fast enough to the proper relatives and so forth," he says. "That could be a problem."



The relationship between police and the medical examiner's office demands it be a close one. Lt. Miller says taking the necessary precautions to determine any cause of death is important, but she also understands the financial burden both institutions are experiencing.

"It's difficult to get all of the work done that we would like to necessarily like to have done when there's such a shortage of personnel to do it," Miller says.

Therein lies the problem -- money, or lack of it, to properly staff the medical examiner's office. Fallico says there has not been a serious problem with bodies stacking up -- yet.

"His comment that it hasn't come to that yet is the best that we have to go with, that up until this point we've been able to deal with the situations as they arise," Miller says.

The state has approved funding for an assistant medical examiner and Fallico says he's looking at a couple of qualified candidates. But until one is hired, Fallico is on his own. He is a single medical examiner with no shortage of cases that need an examination.



SENATE COMMITTEE REPORT

DATE: 4/14/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 4.27.05

Health, Education and Social Services Committee considered

HOUSE BILL NO. 225

HB 225 MEDICAL EXAMINERS & AUTOPSIES

"An Act relating to medical examiners and medical death examinations."

and recommends:

- be replaced with S CS HB 225 (HES)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
HSS	3/29			x	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
Eaton			✓	
Wilken			✓	
Olson	✓			
Dyson CHAIR:	✓			

HB

229

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 229
(H) Publish Date: 4/1/05

Revision Date/Time (Note if correction):
Title Reinstatement of Native Corporations
Dept. Affected: Commerce
RDU Occupational Licensing (117)
Component Occupational Licensing
Sponsor Foster, Hawker
Requester House Community & Regional Affairs
Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation reinstates certain Native corporations that have been involuntarily dissolved under AS10.06.633(e), provided they apply on or before December 31, 2006. New funds are not required to implement the provisions of this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
Division Occupational Licensing Date/Time 3/30/05 4:59 PM
Approved by: Edgar Blatchford, Commissioner Date 3/30/2005
Agency Commerce, Community, and Economic Development

Alaska House of Representatives

Richard Foster
P.O. Box 1630
Nome, AK 99762
907-443-5036
Fax 907-2162



During Session
State Capitol Rm. 410
Juneau, AK 99801-1182
907-465-3789
Fax 907-465-3242

Majority Whip

House Bill 229

"An Act relating to the reinstatement of Native corporations; and providing for an effective date."

Sponsor's Statement

This legislation has been introduced at the request of one of the Regional Native Corporations within our District. Corporations have been involuntarily dissolved by the commissioner under AS 10.06.633 and failed to apply for reinstatement during the grace period established in statute.

This legislation provides a one-time window during which Native Village Corporations who have been dissolved can apply for reinstatement.

The legislation is needed because these corporations were established under the Alaska land claims settlement and legally own village corporation assets. A new corporation could be created but it would not have the same legal standing as the original corporations nor legally own those assets.

The Final provision of the bill allows a Village Native Corporation's board of directors to legally change the corporation's name, if another corporation has taken the previously used name.

This Legislation will apply to Caswell Native Association (date not known), Savoonga Native Corporation (should have reinstated by 12/31/03), Arviq Incorporated (should have reinstated by 2/25/04), and Oscarville Native Corporation (should have reinstated by 2/25/04)

Alakanuk, Brevig Mission, Chevak, Elim, Einmonak, Gambell, Golovin, Hooper Bay, Kotlik, Koyuk, Mekoryuk, Mountain Village, Newtok, Nightmute, Nome, Prka's Point, St. Mary's, St. Michael, Savoonga, Scammon Bay, Shaktoolik, Sheldon Point, Stebbins, Teller, Toksook Bay, Tununak, Unalakleet, White Mountain

HB 58

"An Act relating to the reinstatement of Native Corporations; and providing for an effective date."

Representative Richard Foster

Talking Points

- Legislation provides a one-time window during which Native village corporations who have been involuntarily dissolved can apply for reinstatement.
- These corporations need to be reinstated because they hold the assets that were granted to Native village incorporation under the Alaska land claims settlement.
- A newly created corporation would not automatically hold those same assets even if it had the same name as the original corporation.

Possible Side Issues:

- Every two years a \$100 fee and a report listing the corporate officers are required by the State.
- A request for reinstatement can be made during the next two years. A penalty of \$37.50 is added to the \$100 fee. At the end of this two-year period the corporation is involuntarily dissolved.
- To be reinstated the corporation would have to pay the two required \$100 fees and two penalty fees, i.e. \$275
- The approximate cost for issuing the certificate of incorporation is \$61 so there is a slight positive fiscal impact but not enough to warrant anything but a zero fiscal note

HB

230

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

MAY 2 2005

SENATE FINANCE
COMMITTEE

DATE: 4/14/05

FURTHER:

DATE TURNED
IN TO OFFICE: 2 May 2005

Finance Committee considered HOUSE BILL NO. 230

HB 230 LOANS FOR COMMERCIAL FISHING TENDERS

"An Act authorizing the making of loans for upgrade of commercial fishing tender vessels and gear."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:

- Same Title
- New Title

SCS House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	F#

Department	Date	Fiscal	Ind.	Zero	FN#
Commerce	3/25/05			✓	#1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
COCHAIR: <i>Gary Wells</i>			✓	
COCHAIR: <i>Lynne Green</i>	✓			

FISCAL NOTE

REPORTED OUT

MAY 2 2005

SENATE FINANCE
COMMITTEE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 230
 (H) Publish Date: 4/1/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title: Loans for Commercial Fishing Tenders RDU: Investments (122)
 Component: Investments
 Sponsor: Thomas
 Requester: House Fisheries Component No.: 383

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1036)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

POSITIONS	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would amend the Commercial Fishing Revolving Loan Fund (CFRLF) to allow the department to make loans for the upgrade of existing tender vessels and gear to improve the quality of Alaska seafood products. The total balances outstanding to a borrower on tender vessel upgrade loans may not exceed \$300,000. The department anticipates making approximately five tender upgrade loans each year totaling \$325,000.

No additional administrative costs would be required to accommodate this amendment to the CFRLF.

Prepared by: Greg Winegar, Director Phone: (907) 465-2510
 Division: Investments Date/Time: 3/25/05 11:36 AM
 Approved by: Edgar Blatchford, Commissioner Date: 3/25/2005
 Agency: Commerce, Community, and Economic Development



REPRESENTATIVE BILL THOMAS

ALASKA STATE LEGISLATURE DISTRICT 5

e-mail: Representative.Bill.Thomas@legis.state.ak.us webpage: www.akrebublicans.org/thomas/

State Capitol

Juneau AK, 99801-1182

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SPONSOR STATEMENT

HB 230

Loans for Commercial Fishing Tenders

“An Act authorizing the making of loans for upgrade of commercial fishing tender vessels and gear.”

House Bill 230 makes a small change in the Commercial Fishing Loan Act (AS 16.10.300 – 370) to allow Alaskan owners of fish tenders to be eligible for loans to improve the quality of our seafood products. Under the current law, the Division of Investments in the Department of Commerce, Community and Economic Development offers low interest loans to fishing permit holders to upgrade their equipment in order to improve the quality of the seafood product they are handling. Tenders, who buy fish on the fishing grounds from fishermen and transport the product to processing plants, are an important part of the seafood handling process. However, they are not defined as fishermen and are therefore not currently eligible for the product quality improvement loans. The state has taken some positive steps to emphasize quality improvement on fishing vessels and in processing plants, but has neglected this segment of the seafood production system. This bill will allow qualified Alaska resident tender owners to participate in the state's loan program to upgrade their equipment, encouraging another key component of the fishing industry to improve the way fish are handled and increasing the quality and value of Alaska's seafood. HB230 is supported by the Alaska Independent Tendermen's Association.

Contact Ian Fisk in Rep. Thomas' office at 465-3732

Companion to HB 230



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Bert Stedman
Current Version: SB 145
Contact: Tim Barry, 465-3873

Fact Sheet for: Senate Bill 145

Short Title: LOANS FOR COMMERCIAL FISHING TENDERS

Summary:

- Amends the Alaska Commercial Fishing Act to make seafood quality improvement loans available to fish tenders.

Benefits:

- Creates the opportunity for another segment of the commercial fishing industry to join the effort to improve the quality of Alaskan seafood.
- Brings fairness to the loan program by making seafood quality improvement loans available to an important segment of the commercial fishing industry.

Background:

- Alaska's seafood industry always strives to improve the processing, handling and quality of its product. The state provides low interest loans under its Commercial Fishing Loan Act so fishermen can upgrade equipment that improves the overall quality of the seafood. SB 145 amends the loan program so owners of fish tenders can participate in the loan program. SB 145 is supported by the Alaska Tendermen's Association.

LEGAL SERVICES

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Juneau, Alaska 99801-1182
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MEMORANDUM

March 17, 2005

SUBJECT: Sectional Summary of SB 145, an Act authorizing the making of loans for the upgrade of commercial fishing tender vessels and gear (Work Order No. 24-LS0679\F)

TO: Senator Bert Stedman
Attn: Tim Barry

FROM: George Utermohle
Legislative Counsel

You have requested a sectional summary of SB 145, an Act authorizing the making of loans for the upgrade of commercial fishing tender vessels and gear.

As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends AS 16.10.310(a) to authorize the Department of Commerce, Community, and Economic Development to make commercial fishing loans to an individual for the upgrade of existing tender vessels and gear to improve the quality of Alaska seafood products, if the individual has been a state resident for a continuous period of two years immediately preceding the date of application for the loan.

Section 2 of the bill amends AS 16.10.320(d) to provide that the maximum amount of the outstanding balance of a loan made to an individual for upgrade of existing tender vessels and gear is \$300,000.

Section 3 of the bill amends AS 16.10.320(e) to provide that two or more qualified individuals may jointly obtain a commercial fishing loan for upgrade of existing tender vessels and gear. The maximum amount of the loan made to qualified individuals who jointly apply for the loan is equal to \$300,000 times the number of qualified applicants for the loan.

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F/V Kupreanof



P.O. Box 2983
Sitka, AK 99835

(907)747-2137 boat/mail

To Whom it may Concern,

Reference: SB 145

This is a letter of testimony in case I am out of town doing the Herring fishery here in Sitka when the bill comes up. This bill corrects an oversight in the Vessel Quality Improvement Program.

The State has grant and loan programs for processors and a loan program for fisherman however Tenders don't qualify for either. Tenders are where most of the refrigeration of product takes place. Tenders transport fish from the fishing grounds to the processors all over the state. Most Tenders these days are individually owned and operated, NOT company owned. I consider myself to be a normal tender. I own the boat and my wife and kids are the crew. I hire crewmembers as necessary when the kids are in school. We as Tender operators have suffered the same downtrend in the industry just like everyone else. Costs go up and income goes down. For me I consider it a "good year" if I can gross two thirds of what I did ten years ago.

This bill gives access to the Vessel Quality Improvement Program to Alaskans who own and operate tenders in the State of Alaska. Tenders are an integral part of the fishing industry. The ASMI saying "Keep it fresh, keep it cold, keep it moving".....We DO that! We need help to improve our refrigeration and product handling, too. I had to upgrade my refrigeration last spring after a breakdown. I was told by Arne Fugulvog F/V Mitkof to use the program because he just had and it was an excellent program. When I tried to apply I was told I couldn't qualify because I was just a tender. Well, the Mitkof was a Tender, too. It didn't fish, it just tendered! The only difference was that Arne held a permit.

This bill corrects that. I don't know anyone who is opposed to it. It WILL help improve fish quality in the State of Alaska. Thank you.

Sincerely,

James M. Edson

Companion to HB 230

Apr-7-05 8:22AM;

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Sent By: UFA;
To: Sen. Stedman

907 463 2545;

At: 465-3922



Cordova District Fishermen United

P.O. Box 938
Cordova, Alaska 99574
(907) 424-3447 FAX (907) 424-3430

April 7, 2005

Senate Labor & Commerce
Senator Con Bunde, Chair
State Capitol Building

RE: Support SB 145 – Loan for Commercial Tenderman

Dear Senator Bunde

Cordova District Fishermen United (CDFU) supports SB 145 that allows qualifying Alaska tendermen the ability to obtain state loans from the Division of Investments.

Tenders are an important part of the commercial fishing industry and help to maintain high quality of our salmon from the fishing grounds to our processors. These loans will be available to existing tender owners that are Alaska residents. As the need to improve quality in Alaska's seafood product continues to rise, the ability for existing tender owners to obtain state loans for the purpose of upgrading their equipment & gear is critical.

Respectfully,

Diane Platt
Diane Platt
Executive Director

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Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway
Juneau, AK 99801



Phone 907-586-6652

Fax 907-523-1168

E-mail: seaafa@gci.net

April 7, 2005

Senate Labor & Commerce
Senator Con Bunde, Chair
Alaska State Legislature
Juneau, AK 99801

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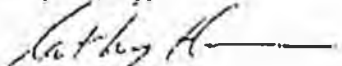
RE: Support SB 145 - Loans for Commercial Tendermen

Dear Senator Bunde and Committee members,

The Southeast Alaska Fishermen's Alliance (SEAFA) supports SB 145 that allows Alaskan tendermen the ability to get loans from the Division of Investments if they meet all the requirements. Tenders are an important part of the commercial fishing industry. As the Alaskan fishing industry works to increase the quality of our fishery resources, it is important that the tenders we use in the fishery have the ability to also upgrade. Without this ability we create a weak link in the handling of our product in trying to increase the quality of our products. We consider it only fair that they are allowed access to funds to upgrade their operations.

Southeast Alaska Fishermen's Alliance (SEAFA) is a multi-gear non-profit membership fishing organization that represents our members involved in the salmon, crab, shrimp and longline fisheries of Southeast Alaska.

Respectfully,


Kathy Hansen
Executive Director

cc: Senator Steinhilber, OFA

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March 30, 2005

Time

FAX MESSAGE

PAGE 1 of 1

TO: REPRESENTATIVE RALPH SAMUELS
CO-CHAIR HOUSE RESOURCES COMMITTEE

FROM: HAROLD THOMPSON
BOARD MEMBER
ALASKA INDEPENDENT TENDERMAN'S ASSOCIATION

On behalf of the Board of Directors, I would like to express our whole-hearted support for HB 230 as written. Tenders are a vital link in the quality chain from fishermen to processors and access to loans already available to fishermen and tendermen with commercial fishing licenses would be most helpful for those of us that operate solely as tenders.

The economics of tendering are difficult at best for those of us that have no fishing permits. Access to these loans would help us upgrade or maintain the systems we need to maintain optimum quality, for the benefit of the entire industry.

~~Thank you for the opportunity to testify by fax~~

Respectfully,



Harold Thompson for
Alaska Independent Tenderman's Association

cc: Senator Bert Stedman



APR 15 2005

Lela F. Klingert
President

April 12, 2005

VIA Telefax—Hard Copy to follow by U.S. Mail

Senator Lyda Green
Senate Finance Committee
Alaska State Legislature
Juneau, AK

Dear Senator Green,

Please consider the following commentary regarding SL 145, which is currently awaiting disposition in the Senate Finance Committee.

Alaska Commercial Fishing and Agriculture Bank (CFAB) is cooperatively-structured, privately-owned, financing institution. As its name implies, one of CFAB's primary missions is to provide financing to resident Alaska participants in the commercial fishing business. In practice, and although CFAB has broader missions and authorities, commercial fishing interests have been the dominant focus of its lending activities for over 25 years.

CFAB was created through actions of the 1978 and 1979 Legislatures, whose relevant acts became what is today AS44.81. The State of Alaska provided an initial \$32 million of capital, with the statutory requirement that it be repaid to the State no later than July 2000. In actuality, return of the State's capital was completed in 1998. CFAB today is owned totally and exclusively by Alaska residents and resident-owned entities, whose equity interest totals about \$19 million. Its governance is by a seven-person Board of Directors, five of whom are elected by its owners ("members" in cooperative parlance); two Directors are appointed by the Governor of Alaska. CFAB is subject to annual and professional audits; in its operations it is subject not only to AS44.81 but to commercial lending laws, employment laws, and other laws affecting private corporations generally. Its annual reports are furnished not only to its members but to the Legislature, the Governor, and to the public. CFAB each year pays income taxes to the State of Alaska in addition to Federal income taxes.

CFAB is an uncommon success story for the Alaska State Legislature, for the resident commercial fishing community, and for its many Directors and employees who have served for over 25 years. Few of the many enterprises, agencies, and projects that were fueled by large infusions of State funding - in various forms - during the late 1970's and early 1980's remain in existence today, let alone able to point to the record such as CFAB has compiled.

Alaska Commercial Fishing and Agriculture Bank

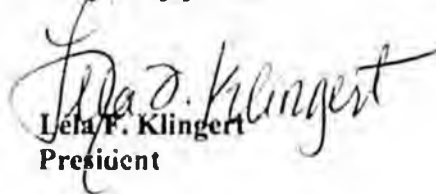
Senator Lyda Green
April 12, 2005
Page 2

CFAB makes loans to Alaska residents for the purpose of acquiring or improving tender boats. There is no statutory or regulatory limit on the amounts of such loans, nor has CFAB yet encountered a practical limit. CFAB currently has, and has consistently had, funds available for such loans. There is not, in our view, great demand for such loans; that is consistent with what appears to be a long-term industry trend away from tendering operations. The only constraint we have, on occasion, encountered appears to be a lack of creditworthiness among some applicants.

We cannot understand the rationale, or public good to be served, in support of legislative action which would place the State of Alaska in further direct competition - and, moreover, put public funds at risk in an extremely challenging environment - with a privately-owned and tax-paying institution ordained by the Legislature, and whose existence represents the sacrifices and investments of thousands of Alaska residents! How can such an action be justified? In what other area of commercial activity would the Legislature consider introducing the State of Alaska as a direct competitor? We at CFAB believe neither SB145 nor its intent is worthy of your consideration, unless you are in a position to realistically and adequately address these questions of principle.

We would very much appreciate any comment you might offer on the foregoing. In addition, we would be happy to respond to requests for further information or insight concerning CFAB or SB145.

Very truly yours,


Lela F. Klingert
President

Cc: Senator Dyson
Senator Stedman
Senator Hoffman
Senator Olson
Senator Bunde
Senator Wilken