

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 3009

1 \* Sec. 14. The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

3 APPLICABILITY. This Act applies to all complaints filed on or after the effective  
4 date of secs. 1 - 13 of this Act.

5 \* Sec. 15. The uncodified law of the State of Alaska is amended by adding a new section to  
6 read:

7 TRANSITION: REGULATIONS. The State Commission for Human Rights may  
8 proceed to adopt regulations necessary to implement the changes made by this Act. The  
9 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the  
10 effective date of the statutory change.

HOUSE CS FOR SENATE BILL NO. 132(JUD) (3/3/06)  
"AN ACT RELATING TO COMPLAINTS FILED WITH, AND  
INVESTIGATIONS, HEARINGS, AND ORDERS OF, AND  
THE INTEREST RATE ON AWARDS OF THE  
STATE COMMISSION FOR HUMAN RIGHTS; PROVIDING FOR ATTORNEY  
FEES AND COSTS IN CASES INVOLVING HUMAN RIGHTS VIOLATIONS;  
MAKING CONFORMING AMENDMENTS; AND AMENDING RULE 82, ALASKA  
RULES OF CIVIL PROCEDURE."

SECTIONAL ANALYSIS  
OFFICE OF THE ATTORNEY GENERAL

- Section 1: Amends AS 18.80.100 to ensure that a complainant may withdraw a complaint of unlawful discrimination during the investigative and conciliation phases of the procedures and before the executive director issues an accusation, which begins formal procedures.
- Section 2: Adds new subsections to 18.80.100. The power of the executive director to file a complaint is moved from subsection (a) to proposed subsection (b).
- Proposed subsection (c) to 18.80.100 adds a limitation period for filing a complaint. The current limitation period--180 days after the discriminatory act or practice ends--was set by the commission in 6 AAC 30.230. Subsection (c) moves the limitations period to statute and expands it to one year.
- Section 3: Amends 18.80.110 to require a written and signed agreement if a complaint is resolved in the conciliation phase, to make that agreement the equivalent of a commission order for purposes of enforcement, and to authorize the compromise of a damages claim in the agreement.
- Section 4: Adds a new section establishing the procedure to be followed if a complaint lacks substantial supporting evidence and expanding the discretion of the executive

director to dismiss a complaint that is supported by substantial evidence in appropriate circumstances and subject to review by the commission. A purpose of the section is to reverse the Alaska Supreme Court's decision in *Department of Fish and Game v. Meyer*, 906 F.2d 1365 (Alaska 1995), that a hearing is mandatory if a complaint is supported by substantial evidence. The Court concluded that the law did not give the commission staff discretion to discontinue action on a complaint after an investigator found substantial evidence of unlawful discrimination. *Id.*, at 1373. The effect of this decision was to require the commission to commit its resources to any complaint supported by substantial evidence without regard to such factors as the weakness of the evidence, the strength of an employer's affirmative defenses, or the significance of the alleged violation.

Subsection (a) establishes the procedure that follows a conclusion after investigation that substantial evidence does not support a complaint of unlawful discrimination. The executive director dismisses the complaint without prejudice.

Subsection (b) expands the discretion of the executive director to pursue complaints based on such factors as, for example, the availability or willingness of the complainant to attend a hearing, the complainant's desire to take the claim to another forum, or the weakness of the case.

Subsection (c) provides the commission with the discretion to consider an appeal from an order of dismissal by the executive director under subsection (a) or (b).

Subsection (d) ensures that the executive director's administrative dismissal is not a dismissal on the merits. It allows a complainant to file an action with a court or another agency or even file a new

complaint with the commission if the reason for the administrative dismissal can be resolved.

Section 5: Repeals and reenacts 18.80.120, which sets out the requirements for a hearing on a complaint of discrimination.

Subsection (a) provides that, if the executive director refers a complaint for hearing, the executive director must issue an accusation based on the investigator's determination of substantial evidence.

Subsection (b) adds a requirement that the chief administrative law judge appoint the hearing officer who will conduct the hearing, that various statutes applying to the Office of Administrative Hearings (including those addressing disqualification of a hearing officer and administrative hearing records but excluding the section addressing hearing procedures) apply to the hearing, and a requirement that the hearing follow the procedures in the Administrative Procedure Act, AS 44.62.330 - 44.62.630, except where the statutes applying to the commission provide otherwise.

Subsection (c) allows reasonable and fair amendments to an accusation, but it provides that substantial evidence must support an amendment naming a different discriminatory practice and that the parties must have an opportunity to resolve the different discriminatory practice in conciliation before the hearing may proceed.

Subsection (d) establishes the burden of proof at a hearing by requiring that the elements of an accusation or defense be proven by a preponderance of the evidence.

Subsection (e) authorizes the commission, after the parties have had a reasonable opportunity for discovery, to issue a summary decision without a hearing in

similar circumstances that a court may issue summary judgment--when the facts are not in dispute and the party petitioning for a summary decision is entitled to an order as a matter of law.

Section 6: Amends the remedial provisions in 18.80.130(a) to authorize the commission to order a remedy after a hearing or after considering a petition for a summary decision. It clarifies the remedial authority of the commission by providing that the commission may order action to correct the discriminatory practice but may not order awards of noneconomic or punitive damages.

Paragraph (1), addressing remedies for employment discrimination, is amended to expand the examples of appropriate relief that the commission can award to remedy a discriminatory employment practice. To the remedies of hiring, reinstatement or upgrading an employee with or without back pay, it adds the authority to order training regarding discriminatory practices, accommodation of a disability, changes to personnel records, posting signs, restoration of seniority, and the payment of front pay for a period of one year in special circumstances: if hiring, reinstatement or upgrading of an employee cannot be accomplished because the employer does not have an appropriate vacancy; if the employer's discriminatory conduct made the employee incapable of returning to work; or if the relationship between the employer and employee has so deteriorated that they cannot work together. The paragraph adds a duty to mitigate. An order for either front pay or back pay must be reduced by the amount that the employee could have earned if the employee made a reasonably diligent effort to obtain comparable employment.

Paragraph (2), addressing remedies for discrimination in housing accommodation,

makes conforming amendments to the terminology.

- Section 7: Makes conforming amendments to 18.80.130(c).
- Section 8: Adds a provision tying the rate of interest when the commission awards interest to the legal rate in AS 09.30.070.
- Section 9: Makes conforming amendments to 18.80.135(b).
- Section 10: Makes conforming amendments to 18.80.140.
- Section 11: Adds 18.80.147 to require the award in court of costs and a full reasonable attorney's fee at the prevailing reasonable rate to a prevailing plaintiff bringing a claim of unlawful discrimination under 18.80.
- Section 12: Makes conforming amendments to 18.80.270.
- Section 13: Adds definitions of "complainant" and "pay" to the definition section in 18.80.300.
- Section 14: Adds a paragraph to the Administrative Procedure Act adding the commission to the list of agencies that the Act's hearing provisions cover.
- Section 15: Amends the uncodified law to amend indirectly Civil Rule 82, which addresses trial courts' awards of attorney's fees, to allow the award of full reasonable attorneys' fees in actions under AS 13.80.
- Section 16: Amends the uncodified law to apply the changes prospectively to complaints filed after the effective date of the act.
- Section 17: Authorizes the commission to begin adopting regulations to implement the changes before the effective date of the act and provides that the regulations may not take effect before the act's effective date.

SB132



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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 3, 2005

The Honorable Ben Stevens  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 111  
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would amend the investigation and procedure laws of the State Commission for Human Rights (commission). The bill would amend the investigation and hearing procedures to enhance fairness and efficiency and to give the commission more enforcement discretion to increase its effectiveness in combating unlawful discrimination.

The bill would add a new statutory provision, AS 18.80.112, to provide the staff of the commission with greater authority to evaluate complaints of discrimination and to choose the complaints that it pursues to hearing before the commission. The purpose of the amendment is to reverse the Alaska Supreme Court's decision in Department of Fish and Game v. Meyer, 906 P.2d 1365 (Alaska 1995), that a hearing is mandatory if a complaint is supported by substantial evidence. The court concluded that the state human rights laws did not give the commission staff discretion to discontinue action on a complaint after an investigator found substantial evidence of unlawful discrimination. *Id.*, at 1373. The effect of this decision was to require the commission to commit its resources to any complaint supported by substantial evidence without regard to such factors as the weakness of the evidence, the strength of an employer's affirmative defenses, or the significance of the alleged violation. Providing the commission with genuine prosecutorial discretion would allow the commission to commit its resources to complaints it determines merit pursuit, based on such factors as, for example, the strength of the evidence, the severity of the alleged violation, an employer's history before the commission, or the complaint's value in establishing precedent guiding future conduct.

COMMITTEE COPY

The Honorable Ben Stevens

March 3, 2005

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The discretion of the staff of the commission would also be expanded to allow it to compromise a claim for damages in the conciliation (or prehearing) phase of the procedures. The bill would avoid conflicts between staff's exercise of its expanded discretion to compromise, dismiss, or pursue a complaint and the concerns of the victims of unlawful discrimination by allowing a complainant to opt out of commission procedures. A complainant may withdraw the complaint at any time before the executive director of the commission makes the decision to go to hearing and, after withdrawal, pursue the claim independently of the commission in another forum.

The bill would expand on a procedural change made in 2004 when the power to appoint the individuals who conduct commission hearings was moved from the commission to the chief administrative law judge in the Department of Administration. The bill would apply all of the statutes regarding hearings of the office of administrative hearings to the commission (including statutes addressing the qualifications of the persons who would conduct the commission's hearings) except for the statutes establishing hearing procedures. The commission's hearing procedures would be any specific procedures set out in AS 18.80 and the uniform procedures in the Administrative Procedure Act, AS 44.62.330 - 44.62.630. The bill would eliminate from AS 18.80 some duplicative procedural requirements that are addressed in the Administrative Procedure Act, such as the admissibility of evidence and the requirement that testimony be under oath. Another change would be the addition of a provision similar to a motion for summary judgment in the civil rules of court to allow a summary decision on the law if the facts are not disputed. The reason for allowing a summary decision is that it is a faster procedure than a hearing, and it would provide a sufficient opportunity to be heard on the legal issues when the facts are not in dispute. The bill would add a provision tying the rate of interest on commission economic awards to the rate of interest on judgments in AS 09.30.070, to conform the commission's rate to the rate awarded by other administrative agencies and the courts. It would continue to allow the commission to amend an accusation after a case is referred for hearing, but it would require that each new claim be supported by substantial evidence and that the commission provide a respondent with the opportunity to address new claims informally before being required to defend them in a formal hearing. The bill would move the statute of limitations for bringing a claim from regulation (6 AAC 30.230) to statute.

The bill would identify the specific relief available to remedy discrimination, to make the process more open and predictable and, thus, fairer. The bill would incorporate into statute the Alaska Supreme Court's conclusion that the commission lacks the authority to award punitive or

The Honorable Ben Stevens  
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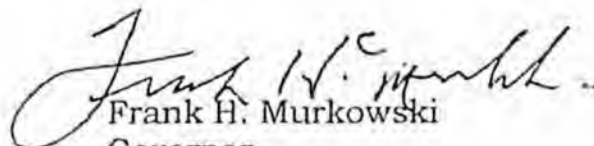
noneconomic damages. The bill would amend AS 18.30.130 to establish restoration of the benefit that was deprived -- hiring, promotion, or reinstatement to a position with back pay -- as the customary remedy for unlawful employment discrimination. The bill would define "pay" broadly to mean all compensation for service, including the cost of employee benefits. In the unusual case of an employee who is unable to return to work, the bill would allow an award of up to one year of future compensation. For any pay that the commission awards, the bill would require the commission to offset the amount an employee should have been able to earn after making a reasonable effort to find similar work.

Very importantly, under the bill the commission would retain the authority to order affirmative action to correct unlawful discrimination and to award "any appropriate relief" if it needs to innovate in order to remedy an unusual case of discrimination.

By increasing the commission's discretion in handling complaints, the bill would enable the commission to allocate its diminishing resources to cases in which the commission could be the most effective in addressing and eliminating unlawful discrimination. By streamlining commission procedures, the bill would help contain costs and ensure that the procedures are equitable to both complainants and the persons, businesses, labor organizations, and employment agencies charged before the commission with unlawful discrimination.

I urge your prompt and favorable action on this bill.

Sincerely yours,

  
Frank H. Murkowski  
Governor

Enclosure

## ANALYSIS OF SB 132 (ASCHR BILL)

**Enhances effectiveness of the Alaska State Commission for Human Rights by allowing the commission to evaluate complaints of unlawful discrimination and to allocate its resources to prosecuting those complaints that will best serve the commission's goal of eliminating unlawful discrimination; improves commission procedures; enhances the fairness of commission proceedings; and clarifies the remedies that the commission may award in employment cases.**

- Authorizes executive director to choose the complaints of unlawful discrimination that merit pursuit, based on factors such as strength of evidence, severity of alleged violation, employer's history before the commission, or complaint's value in establishing precedent. (Sec. 4)
- Has the effect of reversing *Department of Fish and Game v. Meyer*, 906 P.2d 1365 (Alaska 1995), which required the director to take to hearing any complaint supported by substantial evidence of unlawful discrimination without regard to such factors as the weakness of the evidence, or the strength of an employer's affirmative defenses. (Sec. 4)
- Allows complainant to withdraw complaint before accusation is served, but preserves executive director's right to file complaint on her own. (Secs. 1, 2)
- Avoids conflicts between (1) staff's exercise of expanded discretion to compromise, dismiss, or pursue complaint and (2) victims' interests, by allowing complainant to opt out of commission procedures, and after withdrawal, to pursue claim independently of commission in another forum. (Sec. 1)

### **Improves commission procedures**

- Permits agreements during the prehearing (conciliation) phase to compromise damage claims. (Sec. 3)
- Requires that agreements be reduced to writing, and provides that agreements are enforceable as commission orders. (Sec. 3)

- Establishes procedure to be followed if a complaint is found after investigation to lack sufficient supporting evidence. (Sec. 4)
- Requires commission to follow procedures in Administrative Procedure Act, unless AS 18.80 provides different procedure. (Secs. 5, 12)
- Allows the commission to issue a summary decision, which is similar to a motion for summary judgment; if facts are not disputed, the commission can make a ruling without providing a full hearing. (Sec. 5)

#### **Enhances fairness of commission's procedures**

- Requires the charges in the accusation that the executive director issues after deciding to pursue a complaint to hearing to be based on the investigator's determination of substantial evidence. (Sec. 5)
- Requires that substantial evidence support any new charges of unlawful discrimination that are added when the accusation is amended. (Sec. 5)
- Requires that respondent have an opportunity to address all charges informally (even charges added by amendment) before being required to defend them in a formal hearing. (Sec. 5)

#### **Clarifies the remedies that the commission may award to remedy unlawful discrimination**

- Sets out examples of appropriate action to correct unlawful employment discrimination, including ordering the accommodation of a disability or changes to personnel records, while retaining the commission's general authority to order corrective action. (Sec. 6)
- Prohibits noneconomic or punitive damages. (Sec. 6)
- Defines "pay" (as used in the remedies of back pay and front pay) to include retirement, health, and other fringe benefits, in addition to wages, salary, and commissions. (Sec. 12)

- Limits remedies for employment discrimination (normally) to restoration of actual benefits lost – *i.e.*, for employers this would mean payment of back pay and hiring, promoting, or reinstating an employee to a position. (Sec. 6)
- But allows the award of front pay for a period of up to one year if a return to work is impossible because no vacancy exists, the employer's unlawful discrimination made the employee incapable of work, or the working environment deteriorated intolerably. (Sec. 6)
- Requires any order to pay wages (front pay or back pay) to be reduced by the amount the employee should be able to earn with a "reasonably diligent" effort. (Sec. 6)

#### **Makes housekeeping changes**

- Incorporates current regulation's (6 AAC 30.230) 180-day limitation period for filing complaint. (Sec. 2)
- Incorporates the rate of interest that the commission may award that is now set in regulation (6 AAC 30.480) and which is the statutory interest rate provided in AS 09.30.070. (Sec. 8)
- Adds a definition of "complainant." (Sec. 11)

Rep. Gara's Amendments to SB 132 (Human Rights Bill)

AMENDMENT # 3 (Rep. Gara)

This amendment extends the statute of limitations from the current 180 day limitations period to 365 days.

- The Commission's comments and fiscal note estimate the amendment will result in approximately 125 new cases being filed with the Commission. Of these 125 new cases, approximately 80 will likely be dismissed by the Commission due to lack of evidence that any discrimination occurred. (According to its own annual reports, the Commission dismisses an average of about 65% of claims filed with it on the grounds that there is no substantial evidence any discrimination actually occurred) These 80 employers will have incurred significant costs in terms of time and money to defend themselves from baseless claims.
- Of the remaining 45 cases that are not dismissed, if we assume employers prevail by asserting defenses in ½ of these (through voluntary dismissal, settlement, mediation, or actual decisions by the Commission), then 22 more employers will have incurred costs in terms of time and money to defend themselves against invalid claims.
- Of the remaining 22-23 cases where it appears there is a valid issue of whether discrimination actually occurred, some plaintiffs will voluntarily stay or dismiss their cases with the commission in order to pursue the claims in court where the types of damages available are more favorable.
- The end result of the amendment is that the Commission will have to handle a small number of valid claims while a large number of employers will be put to needless expense in terms of time and money. Expenses that will often come straight out of their pocket since most commercial general liability policies do not cover employment related claims. (A separate policy of "EPL" or employment practices liability insurance is usually required for coverage)
- 32 out of 46 states with civil rights commissions use 180 days as a statute of limitations.

AMENDMENT #6 (Rep. Gara)

Would require the court to award full attorneys fees to plaintiff's and their attorneys who prevail in court on a discrimination claim.

- Could result in an increase in liability for employers of tens of thousands of dollars in each case where the plaintiff prevails.
- Plaintiff's attorneys will immediately use such a change in the law to threaten defendants / employers in demand letters with increased liability for attorneys' fees if they refuse to pay and the case were to go to a court trial.
- The possibility of receiving an award of full attorneys' fees will work to draw cases away from the Commission as plaintiff's attorneys steer their clients to the forum where the most favorable damages are available.
- There has been no showing that such a change is needed as an incentive for plaintiff's attorneys to take such cases.

COMMENTS OF THE COMMISSIONERS OF THE ALASKA STATE  
COMMISSION FOR HUMAN RIGHTS  
ON HCS SB 132(STA)  
(as amended by the House Judiciary Committee)

August 22, 2005

The Commissioners submit the following comments on HCS SB 132(STA) as amended by the House Judiciary Committee. The Commissioners met in Fairbanks on June 28 and 29 to discuss the bill and the recent amendments. The Commissioners are concerned about the impact of some of the amendments on the Commission's ability to effectively investigate and resolve discrimination claims.

*Expanding the Time to File Complaints*

The Commissioners are particularly concerned about changes to the bill that would expand the time for filing complaints with the Commission from 180 days to 365 days from the date of harm. Presently, the Commission's regulations provide for 180 days for a person to file a complaint from the date an alleged discriminatory act or practice occurred. 6 AAC 30.230(b). The Commission reduced the filing time from 300 days in 1997 in the face of dwindling resources and a growing backlog of cases. At that time the Commissioners considered the impact to the public and determined that 180 days was sufficient time for Alaskans to bring claims to an administrative agency. The Commission found that reducing the filing time resulted in fewer cases filed and allowed some lessening of the backlog.

Commission staff estimates that expanding the filing time to 365 days will result in approximately 125 additional cases per year. Currently, the backlog of cases awaiting investigation is approximately ninety cases, and most cases are not assigned for investigation for up to eight months after they have been filed. An increase of another 125 filings each year will increase this backlog significantly, and an even greater amount of time will be required before active investigation will begin. The Commission experienced a similar backlog several years ago, frustrating both businesses and complainants seeking efficient resolution of discrimination claims. Although partly lessened by a reduction in filing time, the Commission was able to completely eliminate the backlog after receiving resources for additional staff. These resources have since been reduced and the Commission has lost approximately twenty-five percent of its staff.

The Commissioners believe that, should the filing time be expanded to 365 days, it is imperative that additional resources be given to the Commission to avoid the serious backlog and wait time that would result. At current staffing levels, cases could wait for more than one year before being investigated. The Commission's mandate to conduct prompt investigations would be frustrated by this outcome.

The Commissioners are also concerned that expanding the filing time to 365 days, especially without the influx of additional resources, will cause most cases to become stale before they are ever investigated. As mentioned above, cases now must wait up to eight months before being assigned for active investigation. In cases where complainants wait up to 365 days to file complaints *and* where the cases has been backlogged for up to a year, two year's time could elapse between the alleged discriminatory act and the beginning of the investigation. Even where shorter times have passed, problems with locating witnesses, accurate recollections, and retention of evidence already exist. Moreover, the parties will continue to be frustrated by the additional delays.

Finally, the Commissioners believe that, as a matter of policy, 180 days is sufficient time to allow for the filing of a complaint with the agency. The Commission is an alternative forum in which to file discrimination complaints. Alaskans retain the right to file a complaint in court for up to two years from the date of the alleged discrimination, and are not required to first exhaust their administrative remedies with the Commission. The Commissioners do not believe that 180 days is an inadequate amount of time for complainants to choose between these alternatives.

#### *Proposal to Allow Recovery of Non-Economic Damages*

The Commissioners are also concerned about the proposed amendment to the bill that would provide for the recovery of non-economic damages. The Commissioners oppose the passage of this amendment. As noted above, the Commissioners believe that the Commission is intended to be an alternative forum to filing a civil action in court. The Commissioners believe that the appropriate avenue to seek redress for non-economic damages is to pursue a civil action. The Commissioners believe that the Commission's remedial authority, as set forth in the bill, is sufficient to protect the public interest and to compensate victims of discrimination who choose the Commission as the place to file a complaint.

#### *Additional Changes to SB 132*

The Commissioners reviewed the pending legislation prior to its introduction and agreed to support the bill as a whole in its original form. The present committee substitute, as amended, contains changes in addition to those mentioned above; however, the Commissioners do not believe that these additional amendments sufficiently alter the substance of the legislation. The Commissioners have therefore taken no position on the remaining amendments to the bill.

#### *Conclusion*

The Commissioners continue to support the passage of SB 132. However, the Commissioners are concerned that expanding the time to file complaints to 365 days would adversely affect the Commission's ability to resolve discrimination complaints. The Commissioners are also opposed to the proposed amendment to allow for the recovery of non-economic damages. The Commissioners take no position on the other amendments to the bill.

32 out of 46 (2/3rds) of states with a state civil rights commission use 180 days as their statute of limitations

<u>State</u>	<u>Reg / Statute / Code</u>	<u>Time to File</u>
Alaska	6 AAC 30.310	180 days
Arizona	ARS 41-1471A	180 days
Colorado	CRSA 24.34-403	180 days
Connecticut	CT-CGSA 46a-82(e)	180 days
Delaware	DE-6-4508(b)	90 days
Hawaii	HRS 368-11(c)	180 days
Illinois	ILCS 775-7A-102(A)	180 days
Indiana	IC 2209-3(p)(5)	180 days
Iowa	ICA 216-15-12	180 days
Kansas	KSA 44-1005(i)	180 days
Kentucky	KRS 344-200(1)	180 days
Louisiana	LSA 51-38-2257(A)	180 days
Maine	5 M.R.S.A. 4611	180 days
Maryland	MD Code 1957, 49B-5	180 days
Michigan	Rule 4 (5)	180 days
Missouri	VAMS 213.075(1)	180 days
Montana	MCA 49-2-501	180 days
New Hampshire	HUM 201.04	180 days
New Jersey	NJSA 10:5-18	180 days
New Mexico	NMSA 28-1-11	180 days
North Dakota	14-02.4-19(1)	180 days
Ohio	R.C. 4112.05	180 days
Oklahoma	25 Okl.St. Ann 1502(A)	180 days
Pennsylvania	43 P.S. 959(h)	180 days
South Carolina	1-13-90(a)	180 days
South Dakota	SDCL 20-13-31	180 days
Tennessee	TCA 4-21-302(c)	180 days
Texas	VTCA 21-202(a)	180 days
Utah	UCA 34A-5-107(1)(c)	180 days
Virginia	2.2-2636	180 days
Washington	RCWA 49.60.230(2)	180 days
Wyoming	WS 27-9-106(a)	180 days



## Refrigeration & Food Equipment Inc.

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Email: [tjm.agosti@alaska.com](mailto:tjm.agosti@alaska.com)

April 18, 2006

Rep Kevin Meyer  
House Finance Committee Co-Chair (fax 465-3476)  
Alaska State Legislature  
State Capital (MS3100)  
Juneau, Alaska 99801-1182

As an independent businessman and a NFIB member, I strongly encourage your support to amend the SB132 Human Rights Commission bill to DELETE the provisions added by the House Judiciary Committee. I would like to have removed the provisions that requires the employer to pay full plaintiff attorney's fees if they prevail in a civil court claim, and changing the statute of limitations back to the original 180 days (vs 365 days).

The Senate Bill 306 (Federal UI Tax Credit) makes a number of changes in state law to conform with the 2004 federal law. These changes will stop deceptive practices in obtaining a lower UI rate. I support this bill because if it is not passed, Alaska's Unemployment Insurance Program will be de-certified and all employers in the state would lose their federal offset credit of 5.4 percent. This bill must pass this year in order for employers to continue to receive the 5.4 percent credit on their federal income tax!

Thank you for your immediate attention to these issues.

Respectfully,

A handwritten signature in cursive script that reads "Tim Agosti".

Tim Agosti  
President

Home address:  
36894 Virginia Dr  
Kenai, AK 99611

**SB**

**133**

**HFIN**

**FILE**



# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HCS CSSB 133 (FIN)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
Title Aviation Advisory Board RDU Administration & Support  
Component Advisory Boards  
Sponsor Senate Rules  
Requester House Finance Committee Component No. 2786

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)

Prepared by: House Finance Committee

Phone 465-4945

Approved by: Rep. Moyer, Co-Chair  
Rep. Chenault, Co-Chair

Date 05/03/05

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William Fowler	3900 West International	Anchorage AK 99515	<a href="mailto:wfowler@nac.aero">wfowler@nac.aero</a>		249-5105	249-5190	
Bob Jacobsen	8421 Livingston Way	Juneau, AK 99801	<a href="mailto:bob@wingsofalaska.com">bob@wingsofalaska.com</a>	586-6823	789-9863	789-3130	321-4700
The Hon. Dan Klaes	P.O. Box 27	Bellies, AK 99726	<a href="mailto:btllodge@alaska.net">btllodge@alaska.net</a>	488-7919	692-5111	692-3655	322-1911
Paul Landis	6160 Carl Brady Dr	Anchorage AK 99502	<a href="mailto:plandis@eraaviation.com">plandis@eraaviation.com</a>	248-1929	266-8310	266-8350	240-1211
Felix Maguire	3801 Patricia Lane	Anchorage, AK 99504	<a href="mailto:felixmaguire@yahoo.com">felixmaguire@yahoo.com</a>		245-1251		529-0099
Wilbur O'Brien	10052 Excursion Circle	Anchorage, AK 99515	<a href="mailto:wilbur@acsalaska.net">wilbur@acsalaska.net</a>	563-0446		522-1924	230-1219
The Hon. Mike Salazar	P.O. Box 6918	Kelchikan, AK 99901	<a href="mailto:msalazarklnair@worldnet.att.net">msalazarklnair@worldnet.att.net</a>	225-5044	225-6608	247-6608	206/669-5901
Richard Wien	559 Aquila	Fairbanks, AK 99712	<a href="mailto:rwien@florcraft.nu">rwien@florcraft.nu</a>		452-1423		322-0424
Ken Lythgoe	P.O. Box 240803	Anchorage, AK 99524-0803	<a href="mailto:KenLythgoe@gci.net">KenLythgoe@gci.net</a>		440-7818	346-4552	440-7818 346-1200

SB133

FRANK H. MURKOWSKI  
GOVERNOR  
GOVERNOR@GOV.STATE.AK.US



P.O. Box 110001  
JUNEAU, ALASKA 99811-0001  
(907) 465-3500  
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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 4, 2005

The Honorable Ben Stevens  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 111  
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill establishing a permanent Aviation Advisory Board in statute.

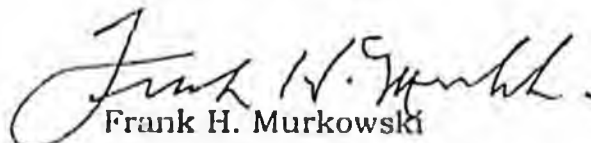
This bill would establish a permanent advisory board within the Department of Transportation and Public Facilities (DOTPF) to make recommendations to the commissioner of DOTPF with respect to that department's aviation functions. On January 15, 2003, I created a temporary interim Aviation Advisory Board by Administrative Order No. 204. I reestablished the temporary board through Administrative Order No. 215, dated June 25, 2004. This bill would make the board permanent.

The permanent board would have the same composition as the current 10-member interim board, with representatives of various stakeholders in aviation matters. However, one additional board member would be added, to provide for an uneven number of members and thus avoid tie votes. The governor would appoint board members to staggered three-year terms. As is the case for members of the existing interim board, members would serve without compensation, other than coverage of travel and per diem expenses for members who are not state officers or employees. All members would serve at the pleasure of the governor.

This bill would afford the commissioner of the DOTPF valuable input from the perspective of the aviation industry and the two largest airport hub communities regarding state aviation policy and management. It would ensure that those same stakeholders would have an ongoing opportunity to advise and make recommendations to the commissioner of DOTPF.

I urge your prompt and favorable action on this measure.

Sincerely yours,

  
Frank H. Murkowski  
Governor

Enclosure

COMMITTEE COPY

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 133  
(S) Publish Date: 3/7/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
Title Establish Aviation Advisory Board RDU Administration & Support  
in Statute Component Commissioner's Office  
Sponsor House Rules  
Requester Governor's Office Component No. 530

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)

The Department of Transportation has issued a zero fiscal note for this legislation due to the fact that DOT/PF has already requested \$20,000 of general funds in its 2006 operating budget. The amount would cover board member per diem and travel, and minor room rental and supplies expenses.

Prepared by: Nona Wilson  
Division: Legislative Liaison, DOT&PF  
Approved by: Mike Barton  
Agency: Commissioner, DOT&PF

Phone 465-3904  
Date/Time 2/28/05 1:39 PM  
Date 2/28/2005

5-3-05  
*new zero note*

# FISCAL NOTE

STATE OF ALASKA  
 2005 LEGISLATIVE SESSION

Fiscal Note Number: 2  
 Bill Version: SB 133  
 (S) Publish Date: 4/25/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
 Title Aviation Advisory Board RDU Administration & Support  
 Component Advisory Boards  
 Sponsor Senate Rules  
 Requester Senate Finance Component No. 2786

**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	16.0	16.0	16.0	16.0	16.0	16.0
Contractual	2.0	2.0	2.0	2.0	2.0	2.0
Supplies	2.0	2.0	2.0	2.0	2.0	2.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF *latch						
1004 GF	20.0	20.0	20.0	20.0	20.0	20.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>

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)

The amount shown covers board member per diem and travel, minor room rental, supplies, and teleconference costs.

Prepared by: Nona Wilson Phone 465-3904  
 Division Legislative Liaison, DOT&PF Date/Time 4/25/05 8:27 AM  
 Approved by: Mike Barton Date 4/25/2005  
 Agency Commissioner, DOT&PF

# STATE OF ALASKA

## DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

3132 CHANNEL DRIVE  
JUNEAU, ALASKA 99801-7898

TEXT: (907) 485-3652  
FAX: (907) 586-8365  
PHONE: (907) 485-3900

April 26, 2005

The Honorable John Cowdery  
Chair, Senate Rules  
State Capitol, Room 101  
Juneau, AK 99801

Dear Senator Cowdery,

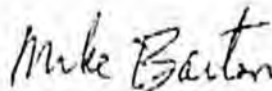
I respectfully request that you schedule Senate Bill 133 for a Senate floor hearing. This bill would establish an ongoing statutory advisory board within the Department of Transportation and Public Facilities to make recommendations to the commissioner of DOT&PF with respect to aviation functions of state government.

Governor Murkowski originally created the board in January 2003 under AS 44.19.028 by Administrative Order No. 204. To avoid dissolution, the board was renewed in June of 2004 through Administrative Order No. 215. This bill would continue the existence of the board without need for annual administrative renewals.

The Department of Transportation and Public Facilities manages and operates the Ted Stevens Anchorage International Airport, Fairbanks International Airport and more than 258 rural airports across the state. Steady dialogic and ongoing coordination between the state and the aviation industry are critical to the state's aviation policy as well as airport management and operations. By the same token, board members would have a continual opportunity to share their industry perspectives and make recommendations to the commissioner of DOT&PF.

I urge your prompt and favorable action on this measure.

Sincerely,



Mike Barton  
Commissioner

## SB 133 Sectional Analysis

### Section 1:

This creates a new article in AS 44, consisting of six new statutory sections, to permanently establish the Aviation Advisory Board within the Department of Transportation and Public Facilities.

AS 44.42.210(a) provides that the purpose of the board is to advise and provide recommendations to the commissioner on public policy related to the department's exercise of its aviation functions.

AS 44.42.210(b) specifically requires the commissioner to consult with the advisory board with respect to candidates to fill, on a permanent basis, the position of chief administrative officer of the Ted Stevens Anchorage and Fairbanks International Airports.

AS 44.42.220(a) states that the board shall meet at least once a year, or more frequently as determined appropriate by the chair of the board, to carry out its advisory functions.

AS 44.42.220(a) and (b) also provides that meetings and records of the board are subject to public meetings and public records laws.

AS 44.42.230(u) adds one additional member to the board for the purposes of having a tie-breaking vote. This section increases board membership from 10 to 11 members. All members serve at the pleasure of the governor.

AS 44.42.230(a)(1) through AS 44.42.230(a)(10) establishes those sectors from which membership shall be drawn:

- One member representing a statewide trade association of air carriers
- One member representing a statewide membership organization of pilots, aircraft owners, and other aviation supporters, organized to promote noncommercial aviation in the state
- One member representing air carriers signatory to the Alaska International Airport System operating agreement
- One member who owns or is employed by an Alaska regional air carrier
- One community leader residing in the unorganized borough of the state
- One member to represent the mayor of the Municipality of Anchorage
- A member to jointly represent the mayors of the City of Fairbanks and the Fairbanks North Star Borough
- A member to represent the tenants of the Alaska International Airport System, but does not represent an air carrier
- One member representing an air carrier engaged exclusively in the air cargo business in the state
- Two members who represent other interests that the governor determines appropriate to advise on aviation activities in the state

AS 44.42.230(b) requires the governor to appoint at least one member from each of the four judicial districts of the state in order to provide geographic balance on the board.

AS 44.42.230(e) provides that the governor designate a chair from among board members, or, at the governor's request, allows for the board to elect a chair from among its members who are not state employees or officers.

AS 44.42.230(d) provide for board members to be appointed to staggered three-year terms and to serve until a successor is appointed.

AS 44.42.240 provides that board service is uncompensated, but board members who are not state employees or officers are entitled to payment of travel expenses and per diem as provided in AS 39.20.180 for members of boards and commissions.

AS 44.42.290 Defines the "Alaska International Airport System" as the Ted Stevens Anchorage International Airport and the Fairbanks International Airport. "Board" means the Aviation Advisory Board established in AS 44.42.200.

**Section 2:**

The Revisor's Instruction provides for designation of existing AS 44.42.010 – AS 44.42.080 as article 1 of AS 44.42 under the heading "Article 1. Department Organization and Functions." Section 2 also designates AS 44.42.900 as article 3 of AS 44.42 under the heading "Article 3. General Provisions."

**Section 3:**

Effective date as per AS 01.10.070(c).



March 15, 2005

Nona Wilson  
Legislative Liaison  
Alaska Department of Transportation and Public Facilities  
3132 Channel Drive, Suite 300  
Juneau, AK 99801-7898

Dear Ms. Wilson:

The Aircraft Owners and Pilots Association (AOPA) is a membership association consisting of over 400,000 pilots and aircraft owners nationwide, 4,600 of whom reside in the state of Alaska. AOPA is committed to ensuring the continued viability, growth, and development of aviation and airports in Alaska and the United States.

The Aircraft Owners and Pilots Association strongly supports Senate Bill 133, regarding the establishment of an aviation advisory board for the Department of Transportation and Public Facilities. Given the huge role that aviation plays in the transportation system of Alaska, it is vital to have a forum for the aviation community to provide input on policy and management issues to the department.

On behalf of the 4,600 AOPA members in Alaska, we thank Governor Murkowski for sponsoring this bill.

Sincerely,

A handwritten signature in black ink that reads "Tom George". The signature is written in a cursive style with a large, prominent "T" and "G".

Tom George  
Alaska Regional Representative

---

TOM GEORGE  
ALASKA REGIONAL REPRESENTATIVE  
PERSONAL ADDRESS: P.O. BOX 83750 FAIRBANKS, AK 99708  
907-388-9955 (PHONE) 907-455-9001 (FAX)  
E-MAIL: tom.george@aopa.org

FRANK H. MURKOWSKI  
GOVERNOR  
GOVERNORS@GOV.STATE.AK.US



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

P.O. Box 110001  
JUNEAU, ALASKA 99811-0001  
(907) 465-3500  
FAX (907) 465-3532  
WWW.GOV.STATE.AK.US

March 4, 2005

The Honorable John Harris  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill establishing a permanent Aviation Advisory Board in statute.

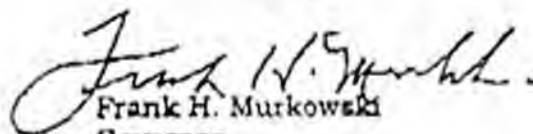
This bill would establish a permanent advisory board within the Department of Transportation and Public Facilities (DOTPF) to make recommendations to the commissioner of DOTPF with respect to that department's aviation functions. On January 15, 2003, I created a temporary interim Aviation Advisory Board by Administrative Order No. 204. I reestablished the temporary board through Administrative Order No. 215, dated June 25, 2004. This bill would make the board permanent.

The permanent board would have the same composition as the current 10-member interim board, with representatives of various stakeholders in aviation matters. However, one additional board member would be added, to provide for an uneven number of members and thus avoid tie votes. The governor would appoint board members to staggered three-year terms. As is the case for members of the existing interim board, members would serve without compensation, other than coverage of travel and per diem expenses for members who are not state officers or employees. All members would serve at the pleasure of the governor.

This bill would afford the commissioner of the DOTPF valuable input from the perspective of the aviation industry and the two largest airport hub communities regarding state aviation policy and management. It would ensure that those same stakeholders would have an ongoing opportunity to advise and make recommendations to the commissioner of DOTPF.

I urge your prompt and favorable action on this measure.

Sincerely yours,

  
Frank H. Murkowski  
Governor

Enclosure

# STATE OF ALASKA

## DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

3132 CHANNEL DRIVE  
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652  
FAX: (907) 586-8365  
PHONE: (907) 465-3900

April 4, 2005

The Honorable Lyda Green  
Co-Chair, Senate Finance  
State Capitol, Room 516  
Juneau, AK 99801

The Honorable Gary Wilken  
Co-Chair, Senate Finance  
State Capitol, Room 518  
Juneau, AK 99801

Dear Senators Green and Wilken:

I respectfully request that you schedule Senate Bill 133 for a hearing before the Senate Finance Committee. This bill would establish an ongoing statutory advisory board within the Department of Transportation and Public Facilities to make recommendations to the commissioner of DOT&PF with respect to aviation functions of state government.

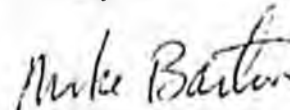
Governor Murkowski originally created the board in January 2003 under AS 44.19.028 by Administrative Order No. 204. To avoid dissolution, the board was renewed in June of 2004 through Administrative Order No. 215. This bill would continue the existence of the board without need for annual administrative renewals.

The statutory Aviation Advisory Board would have the same composition as the current 10-member interim board, with representatives of various stakeholders in aviation matters. However, one additional board member is added to provide for an uneven number of votes on the board. The governor would appoint board members to staggered three-year terms. Like the existing interim board, members would serve without compensation, other than coverage of travel and per diem expenses. All members would serve at the pleasure of the governor.

The DOT&PF manages and operates the Ted Stevens Anchorage International Airport, Fairbanks International Airport and more than 260 rural airports across the state. Steady dialogue and ongoing coordination between the state and the aviation industry are critical to the state's aviation policy as well as airport management and operations. By the same token, board members would have a continual opportunity to share their industry perspectives and make recommendations to the commissioner of DOT&PF.

I urge your prompt and favorable action on this measure.

Sincerely,



Mike Barton  
Commissioner

**SB**

**133**

**SFIN**

**FILE**

**SENATE FINANCE COMMITTEE REPORT**

DATE: 4/1/05

REPORTED OUT  
APR 25 2005  
SENATE FINANCE  
COMMITTEE

FURTHER: Rules

DATE TURNED  
IN TO OFFICE: 4/25/05

Finance Committee considered

SENATE BILL NO. 133

**SB 133 AVIATION ADVISORY BOARD**

"An Act establishing the Aviation Advisory Board; and providing for an effective date."

and recommends:

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

<b>CS Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>SCS House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Ind.	Zero	FN#
DOT	4/25/05	20.0			2

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Ind.	Zero	FN#
DOT	2/27/05			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
Hoffman				✓	
Olson		✓			
Dyson		✓			
Skedman		✓			
Willen	COCHAIR:	✓			
Green	COCHAIR:	✓			

APR 25 2005

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 133  
(S) Publish Date: 3/7/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
Title: Establish Aviation Advisory Board RDU Administration & Support  
in Statute Component Commissioner's Office  
Sponsor House Rules  
Requester Governor's Office Component No. 530

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)  
The Department of Transportation has issued a zero fiscal note for this legislation due to the fact that DOT/PF has already requested \$20,000 of general funds in its 2006 operating budget. The amount would cover board member per diem and travel, and minor room rental and supplies expenses.

Prepared by: Nona Wilson Phone 465-3904  
Division: Legislative Liaison, DOT&PF Date/Time 2/28/05 1:39 PM  
Approved by: Mike Barton Date 2/28/2005  
Agency: Commissioner, DOT&PF

APR 25 2005

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number:  
Bill Version: SB133-DOT-CO-4-25-05  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCT&PF  
Title Aviation Advisory Board RDU Administration & Support  
Component Advisory Boards  
Sponsor Senate Rules  
Requester Senate Finance Component No. 2786

**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	16.0	16.0	16.0	16.0	16.0	16.0
Contractual	2.0	2.0	2.0	2.0	2.0	2.0
Supplies	2.0	2.0	2.0	2.0	2.0	2.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	20.0	20.0	20.0	20.0	20.0	20.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>

Estimate of any current year (FY2005) cost: 00

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)

The amount shown covers board member per diem and travel, minor room rental, supplies, and teleconference costs.

Prepared by: Nona Wilson Phone 465-3904  
Division: Legislative Liaison, DOT&PF Date/Time 4/25/05 8:27 AM  
Approved by: Mike Barton Date 4/25/2005  
Agency: Commissioner, DOT&PF

1 least one member from each of the four judicial districts of the state.

2 (c) [The governor shall designate a member of the board to serve as chair of the  
3 board. or, at the governor's request,] the board shall elect a chair from among its  
4 members who are not state officers or employees.

Delete  
Bracketed  
language

5 (d) Members of the board are appointed for staggered three-year terms and  
6 serve until a successor is appointed. A member appointed to fill a vacancy on the  
7 board serves for the remainder of the unexpired term of the member whose vacancy is  
8 being filled.

9 **Sec. 44.42.240. Compensation, transportation expenses, and per diem.**  
10 Board members receive no compensation as members of board. Board members who  
11 are not state officers or employees are entitled to transportation expenses and per diem  
12 as provided in AS 39.20.180 for members of state boards and commissions.

13 **Sec. 44.42.290. Definitions.** In AS 44.42.200 - 44.42.290,

14 (1) "Alaska International Airport System" means the Ted Stevens  
15 Anchorage International Airport and the Fairbanks International Airport;

16 (2) "board" means Aviation Advisory Board established in  
17 AS 44.42.200.

18 \* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
19 read:

20 **REVISOR'S INSTRUCTION.** The revisor of statutes is requested to designate  
21 AS 44.42.010 - AS 44.42.080 as art. 1 of AS 44.42 under the heading "Article 1. Department  
22 Organization and Functions," and to designate AS 44.42.900 as art. 3 of AS 44.42 under the  
23 heading "Article 3. General Provisions."

24 \* **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).

SENATE FINANCE COMMITTEE  
4 / 25 / 2005 COMMITTEE ACTION

Bill Number	SB 133		
Amendment	# 1		
Motion	to adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	Green		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stedman			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<b>MOTION</b>	WITHDRAWN		

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FOLLOWING  
DOCUMENT(S)  
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# STATE OF ALASKA

## DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

3132 CHANNEL DRIVE  
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652  
FAX: (907) 586-8365  
PHONE: (907) 465-3900

April 4, 2005

The Honorable Lyda Green  
Co-Chair, Senate Finance  
State Capitol, Room 516  
Juneau, AK 99801

The Honorable Gary Wilken  
Co-Chair, Senate Finance  
State Capitol, Room 518  
Juneau, AK 99801

Dear Senators Green and Wilken:

I respectfully request that you schedule Senate Bill 133 for a hearing before the Senate Finance Committee. This bill would establish an ongoing statutory advisory board within the Department of Transportation and Public Facilities to make recommendations to the commissioner of DOT&PF with respect to aviation functions of state government.

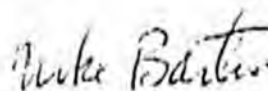
Governor Murkowski originally created the board in January 2003 under AS 44.19.028 by Administrative Order No. 204. To avoid dissolution, the board was renewed in June of 2004 through Administrative Order No. 215. This bill would continue the existence of the board without need for annual administrative renewals.

The statutory Aviation Advisory Board would have the same composition as the current 10-member interim board, with representatives of various stakeholders in aviation matters. However, one additional board member is added to provide for an uneven number of votes on the board. The governor would appoint board members to staggered three-year terms. Like the existing interim board, members would serve without compensation, other than coverage of travel and per diem expenses. All members would serve at the pleasure of the governor.

The DOT&PF manages and operates the Ted Stevens Anchorage International Airport, Fairbanks International Airport and more than 260 rural airports across the state. Steady dialogue and ongoing coordination between the state and the aviation industry are critical to the state's aviation policy as well as airport management and operations. By the same token, board members would have a continual opportunity to share their industry perspectives and make recommendations to the commissioner of DOT&PF.

I urge your prompt and favorable action on this measure.

Sincerely,



Mike Barton  
Commissioner



Frank H. Murkowski  
GOVERNOR

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

June 25, 2004

## ADMINISTRATIVE ORDER NO. 215

I, Frank H. Murkowski, Governor of the State of Alaska, under the authority of art. III, secs. 1 and 24, of the Alaska Constitution, and under the authority of AS 44.19.028, reestablish a temporary interim advisory board as follows:

### BACKGROUND AND PURPOSE

On January 15, 2003, I signed Administrative Order No. 204 creating the temporary interim Aviation Advisory Board and making other organizational changes in the Department of Transportation and Public Facilities. The purpose of this Order is to reestablish and continue the Aviation Advisory Board.

### AVIATION ADVISORY BOARD

It is in the best interests of the people of Alaska, and necessary for efficient administration, that the Aviation Advisory Board, as established by Administrative Order No. 204, as amended by Administrative Orders No. 206 and 211, be reestablished and continued, in order that it may continue to provide recommendations to the commissioner of transportation and public facilities on public policy related to that department's exercise of the aviation functions assigned by law.

Therefore, the temporary interim Aviation Advisory Board established by Administrative Order No. 204, as amended by Administrative Orders No. 206 and 211, is hereby reestablished and continued. Those serving on the Aviation Advisory Board on May 11, 2004, will continue to serve on the re-established board.

The provisions of Administrative Order No. 204, as amended by Administrative Orders No. 206 and 211, applicable to the Aviation Advisory Board established by those orders are applicable to the Aviation Advisory Board as reestablished by this Order.

This Order takes effect immediately.

DATED at Juneau, Alaska, this 25th day of June, 2004.



Frank H. Murkowski  
GOVERNOR

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

July 3, 2003

## ADMINISTRATIVE ORDER NO. 211

I, Frank H. Murkowski, Governor of the State of Alaska, under the authority of art. III, secs. 1, 23, and 24 of the Alaska Constitution, and AS 44.17.060 and 44.17.070, amend my Administrative Order No. 204.

### BACKGROUND

On January 15, 2003, I signed Administrative Order No. 204 creating the Aviation Advisory Board and making other organizational changes in the Department of Transportation and Public Facilities. On January 22, 2003, I amended Administrative Order No. 204 in my Administrative Order No. 206. Administrative Order No. 206 made changes in the composition of the Aviation Advisory Board.

The purpose of this Order is to amend Administrative Order No. 204, as amended by Administrative Order No. 206, to change the composition of the Aviation Advisory Board.

### AVIATION ADVISORY BOARD

Paragraph 7 of Administrative Order No. 204, as changed by Administrative Order No. 206, is repealed and readopted to make a further change in the composition of the Aviation Advisory Board, and shall read as follows:

7. The Aviation Advisory Board consists of 10 members appointed by the governor:

- (a) a member representing the Alaska Air Carriers Association;
- (b) a member representing the Alaska Airmen's Association;
- (c) a member representing carriers signatory to the Alaska International Airport System operating agreement;
- (d) a member who owns or is employed by a regional carrier;
- (e) a member who is a community leader residing in the unorganized borough of the state;
- (f) a member who represents the mayor of the Municipality of Anchorage;
- (g) a member who jointly represents the mayors of the City of Fairbanks and the Fairbanks North Star Borough;
- (h) a member who represents the non-airline tenants of the Alaska International Airport System;
- (i) a member representing an air carrier engaged exclusively in the air cargo business; and
- (j) a member representing other interests the governor determines

appropriate.

This Order takes effect immediately.

Dated at Juneau, Alaska this 3rd day of July, 2003.

/s/Frank H. Murkowski  
Governor

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Frank H. Murkowski  
GOVERNOR

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 22, 2003

### ADMINISTRATIVE ORDER NO. 206

I, Frank H. Murkowski, Governor of the State of Alaska, under the authority of art. III, secs. 1, 23, and 24 of the Alaska Constitution, and AS 44.17.060 and 44.17.070, amend my Administrative Order No. 204.

### BACKGROUND

On January 15, 2003, I signed Administrative Order No. 204 creating the Marine Transportation Advisory Board and making other organizational changes in the Department of Transportation and Public Facilities. The purpose of this Order is to amend Administrative Order No. 204 to change the composition of the Aviation Advisory Board, designate a deputy commissioner for aviation, increase the membership of the Marine Transportation Advisory Board from nine to eleven members, provide for the appointment of the chairs of the Aviation and Marine Transportation Advisory Boards created in that Order, and make other miscellaneous amendments to the provisions of that Order.

### ALASKA MARINE HIGHWAY SYSTEM ORGANIZATION

Administrative Order No. 204 is amended by replacing the provisions of para. 3 of that Order, regarding the administration of the Alaska Marine Highway System, with the following provisions:

3. The Alaska Marine Highway System (AMHS) shall be administered as a unit within the Headquarters Unit of the Department of Transportation and Public Facilities, by a general manager of the AMHS who reports directly to the commissioner of Transportation and Public Facilities.

### DEPUTY COMMISSIONER FOR AVIATION DESIGNATED

Paragraph 5 of Administrative Order No. 204 is amended to provide that aviation related units of the department shall report to the deputy commissioner for aviation as follows:

5. Divisions within the Headquarters Unit responsible for aviation functions of the department, including Alaska International Airport System Controller, Ted Stevens Anchorage International Airport, Fairbanks International Airport, Rural Airports, and the office of aviation leasing established by para. 4 of this Order shall report to the deputy commissioner for aviation who shall in turn report to the commissioner of Transportation and Public Facilities.

**AVIATION ADVISORY BOARD**

Paragraph 7 of Administrative Order No. 204 is repealed and readopted to change the composition of the Aviation Advisory Board and shall read as follows:

7. The Aviation Advisory Board consists of nine members appointed by the governor:

- (a) a member representing the Alaska Air Carriers Association;
- (b) a member representing the Alaska Airmen's Association;
- (c) a member representing carriers signatory to the Alaska International Airport System operating agreement;
- (d) a member who owns or is employed by a regional carrier;
- (e) a member who is a community leader residing in the unorganized borough of the state;
- (f) a member who represents the mayor of the Municipality of Anchorage;
- (g) a member who jointly represents the mayors of the City of Fairbanks and the Fairbanks North Star Borough;
- (h) a member who represents the non-airline tenants of the Alaska International Airport System; and
- (i) a member representing other interests the governor determines appropriate.

**MARINE TRANSPORTATION ADVISORY BOARD**

Paragraph 8 of Administrative Order No. 204 is amended to increase the membership of the Marine Transportation Advisory Board from nine to eleven members and shall read as follows:

8. The Marine Transportation Advisory Board consists of the following 11 members appointed by the Governor:

- (a) a member representing labor unions of employees of the Alaska Marine Highway System;
- (b) a member from Northern Southeast Alaska representing the municipalities of Haines, Juneau, Sitka, and Skagway;
- (c) a member from Southern Southeast Alaska representing the municipality of Ketchikan, Ketchikan Gateway Borough, Metlakatla, Petersburg, Wrangell, and cities and communities of Prince of Wales Island;
- (d) a member from Southeast Alaska representing the cities of Angoon, Hoonah, Kake, Pelican, and Tenakee;
- (e) a member from Prince William Sound/Kenai Peninsula representing the cities of Cordova, Seward, Valdez, and Whittier, the City and Borough of Yakutat, and the communities of Chenega Bay and Tatitlek;
- (f) a member from Southwest Alaska/Aleutian Chain/Alaska Peninsula representing the cities of Akutan, Chignik, Cold Bay, False Pass, Homer, King Cove, Kodiak, Port Lions, Sand Point, Seldovia, and Unalaska/Dutch Harbor;
- (g) a member who is a commercial user of the Alaska Marine Highway System;
- (h) a member who is a member of the Alaska Travel Industry Association;
- (i) a member representing the Southeast Conference; and

(j) two members representing other interests the governor determines appropriate.

For the members described in (b) - (f) in this paragraph, the Alaska Regional Economic Development Organization for the region (AS 44.33.895) shall provide the governor with a list of qualified candidates from which the governor may make an appointment to the board.

### APPOINTMENT OF ADVISORY BOARD CHAIRS

Paragraph 9 of Administrative Order No. 204 is amended to provide that the governor appoints the chairs of the Aviation and Marine Transportation Advisory Boards and shall read as follows:

9. The Governor shall appoint a member of each advisory board to serve as chair of the respective board. Advisory board members appointed under this Order do not receive compensation as members of the Aviation Advisory Board or the Marine Transportation Advisory Board. Advisory board members who are not state employees are entitled to per diem and travel expenses in the same manner permitted for members of state boards and commissions.

This Order takes effect immediately.

DATED at Juneau, Alaska, this 22nd day of January, 2003.

/s/Frank H. Murkowski  
Governor

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Frank H. Murkowski  
GOVERNOR

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 15, 2003

### ADMINISTRATIVE ORDER NO. 204

Under the authority of art. III, secs. 1, 23, and 24 of the Alaska Constitution, and AS 44.17.060 and 44.17.070, I order the following changes in the organization of the Department of Transportation and Public Facilities and, under the authority of AS 44.19.028, establish temporary interim advisory boards, as follows:

1. The commissioner of the Department of Transportation and Public Facilities is ordered and authorized to implement the reorganization of the Department of Transportation and Public Facilities as set out in this Order so as to maximize the efficient administration of that department and to provide more effective service to the public.
2. A position is established for a deputy commissioner for Highways and Public Facilities. The Statewide Planning Division, the Statewide Design and Engineering Services Division, the office of Statewide Maintenance, and the office of Statewide Construction shall report to this officer.
3. The Alaska Marine Highway System shall be administered as a division within the Headquarters Unit of the department by a director of marine operations who reports directly to the commissioner of Transportation and Public Facilities.
4. An office of aviation leasing is established within the department for the purpose of exercising the aviation leasing powers of the department and other agencies under the supervision of the commissioner of Transportation and Public Facilities.
5. Divisions within the Headquarters Unit responsible for aviation functions of the department, including Alaska International Airport System Controller, Ted Stevens Anchorage International Airport, Fairbanks International Airport, Rural Airports, and the office of aviation leasing established by Paragraph 4 of this Order, shall report to the deputy commissioner who shall in turn report to the commissioner of Transportation and Public Facilities.
6. Two temporary interim advisory boards to the commissioner of Transportation and Public Facilities are established. The purpose of these advisory boards is to provide recommendations to the commissioner of Transportation and Public Facilities on public policy related to the department's exercise of the aviation and marine transportation functions assigned by law. The advisory boards may hold public hearings under the Open Meetings Act (AS 44.62.310 - 44.62.312) and use other means to solicit information from the public and other interested persons necessary to carry out their advisory functions. Records of the advisory boards are subject to AS 40.25.110 - 40.25.120.
7. The Aviation Advisory Board consists of nine members appointed by the governor:

- (a) a representative of the Alaska Air Carriers Association;
- (b) a representative of the Alaska Airmen's Association;
- (c) a representative of a cargo carrier that is a signatory to the Alaska International Airport System operating agreement;
- (d) a representative of a passenger carrier that is a signatory to the Alaska International Airport System operating agreement;
- (e) a representative who owns or is employed by a Title 14 Code of Federal Regulations Part 135 air carrier;
- (f) a representative who owns or is employed by a Title 14 Code of Federal Regulations Part 121 air carrier;
- (g) a representative who owns or is employed by an air shipping company;
- (h) a manager of a federally certificated rural airport; and
- (i) a member representing other interests the governor determines appropriate.

To provide geographic balance on the Aviation Advisory Board, at least one member shall be from each of the four judicial districts of the state.

8. The Marine Transportation Advisory Board consists of the following nine members appointed by the governor:

- (a) a member representing labor unions of employees of the Alaska Marine Highway System;
- (b) a member from northern Southeast Alaska representing the municipalities of Haines, Juneau, Sitka, or Skagway;
- (c) a member from southern Southeast Alaska representing the municipality of Ketchikan, Ketchikan Gateway Borough, Metlakatla, Petersburg, Wrangell, and cities and communities of Prince of Wales Island;
- (d) a member from Southeast Alaska representing the cities of Angoon, Hoonah, Kake, Pelican, and Tenakee;
- (e) a member from Prince William Sound/Kenai Peninsula representing the cities of Cordova, Seward, Valdez, and Whittier, the City and Borough of Yakutat, and the communities of Chenega Bay and Tatitlek;
- (f) a member from Southwest Alaska/Aleutian Chain/Alaska Peninsula representing the cities of Akutan, Chignik, Cold Bay, False Pass, Homer, King Cove, Kodiak, Port Lions, Sand Point, Seldovia, and Unalaska/Dutch Harbor;
- (g) a member who is a commercial user of the Alaska Marine Highway System;
- (h) a member who is a member of the Alaska Travel Industry Association; and

(i) a member representing other interests the governor determines appropriate.

For the members described in (d) - (f) in this paragraph, the Alaska Regional Economic Development Organization for the region (AS 44.33.895) shall provide the governor with a list of qualified candidates from which he may make an appointment to the board.

9. Each advisory board established by this order shall elect a member to serve as chair. Advisory board members appointed under this Order do not receive compensation as members of the Aviation Advisory Board or the Marine Transportation Advisory Board. Advisory Board members who are not state employees are entitled to per diem and travel expenses in the same manner permitted for members of state boards and commissions.

10. The commissioner is authorized to make other organizational adjustments needed to fully implement the intent of this order.

11. In this order

- a. "department" means the Department of Transportation and Public Facilities;
- b. "Headquarters Unit" means the office of the commissioner of the Department of Transportation and Public Facilities.

This Order takes effect immediately.

DATED at Juneau, Alaska, this 15th day of January, 2003.

/s/Frank H. Murkowski  
Governor

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SB133

FRANK H. MURKOWSKI  
GOVERNOR

GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

P.O. Box 110001  
JUNEAU, ALASKA 99811-0001  
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March 4, 2005

The Honorable Ben Stevens  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 111  
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill establishing a permanent Aviation Advisory Board in statute.

This bill would establish a permanent advisory board within the Department of Transportation and Public Facilities (DOTPF) to make recommendations to the commissioner of DOTPF with respect to that department's aviation functions. On January 15, 2003, I created a temporary interim Aviation Advisory Board by Administrative Order No. 204. I reestablished the temporary board through Administrative Order No. 215, dated June 25, 2004. This bill would make the board permanent.

The permanent board would have the same composition as the current 10-member interim board, with representatives of various stakeholders in aviation matters. However, one additional board member would be added, to provide for an uneven number of members and thus avoid tie votes. The governor would appoint board members to staggered three-year terms. As is the case for members of the existing interim board, members would serve without compensation, other than coverage of travel and per diem expenses for members who are not state officers or employees. All members would serve at the pleasure of the governor.

This bill would afford the commissioner of the DOTPF valuable input from the perspective of the aviation industry and the two largest airport hub communities regarding state aviation policy and management. It would ensure that those same stakeholders would have an ongoing opportunity to advise and make recommendations to the commissioner of DOTPF.

I urge your prompt and favorable action on this measure.

Sincerely yours,

A handwritten signature in cursive script, reading "Frank H. Murkowski".  
Frank H. Murkowski  
Governor

Enclosure

COMMITTEE COPY

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 3/7/05

FURTHER: Finan

Date of 5-Day Notice: 3/17/05  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 3/31/05

Transportation Committee considered SENATE BILL NO. 133

**SB 133 AVIATION ADVISORY BOARD**

"An Act establishing the Aviation Advisory Board; and providing for an effective date."

and recommends:

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

<b>Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
DOT	2/28			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>Gene Perrault</i> <i>Theriault</i>			✓	
<i>John Cowdery</i> <i>Cowdery</i>	✓			
<i>Kollat Kookesh</i> <i>Kookesh</i>	✓			
<i>DOO</i> <i>French</i>			✗	
CHAIR: <i>[Signature]</i> <i>Huggins</i>	✗			

**SB**

**135**

**HFIN**

**FILE**



# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: CSSB 135(JUD)  
(S) Publish Date: 4/14/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title "An act relating to the crimes of assault and RDU CRIMINAL  
custodial interference..." Component Criminal Justice Litigation  
Sponsor Senator Dyson  
Requester Senate Judiciary Component No. \_\_\_\_\_

**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						
<b>TOTAL OPERATING</b>						

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other - Regulatory Cost Charge						
<b>TOTAL</b>						

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 bill amends AS 11.41.220(a) (Offenses Against the Person - Assault in the third degree) by adding clarifying language regarding medical treatment when a child under the age of 10 years is assaulted by someone 18 years of age or older. It also amends AS 11.41.340 (Custodial Interference in the second degree) by further limiting instances of where a person may claim the defense of necessity.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhotee, Director Phone 465-3673  
Division: Administrative Services Division Date/Time 4/5/05 3:39 PM  
Approved by: Kathryn Daughhotee for David Marquez, Attorney General Date 4/5/2005  
Agency: Department of Law

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSSB 135(JUD)  
(S) Publish Date: 4/14/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title Assault and Custodial Interference BRU Alaska Court System  
Sponsor Senator Dyson Component Trial Courts  
Requester \_\_\_\_\_ Component No. 768

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)

The court system does not anticipate any fiscal impact from the passage of SB 135.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750  
Division: Alaska Court System Date/Time 4/1/05 8:21 AM  
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 4/1/2005  
Agency: Alaska Court System

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSSB 135(JUD)  
(S) Publish Date: 4/14/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title An Act relating to the crimes of RDU Legal and Advocacy Services  
assault and custodial interference. Component Public Defender Agency  
Sponsor Senator Dyson  
Requester Senate Judiciary Component No. 1631

**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	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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	0	0	0	0	0	0
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill should have minimal fiscal impact on the operations of the Public Defender Agency. The Agency does not expect to handle a significant number of offenses covered under this proposed legislation.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416  
Division Public Defender Agency Date/Time 4/4/05 8:54 AM  
Approved by: Michael Tibbles, Deputy Commissioner Date 4/4/2005  
Agency Department of Administration

~~SB~~ with drawn

# HOUSE AMENDMENT # 1

5/9/05

TO: SB 135

BY: BERKOWITZ

Page 1 Line 13-14  
2 1-2 } DELETE

~~the~~ P 1, line 13 following "injury"  
insert

"Causes disfigurement, impairment of health, or loss or impairment of the function of a body member or organ."

This amendment substitutes language from the criminal definition section of 11.81, rather than introducing a list of new terms into the criminal code. This amendment also keeps the focus on the injury to a child victim, rather than the actions of a "reasonable" caregiver.

Submit original amendment to the Chief Clerk.  
It will then be numbered and duplicated.



## SENATOR FRED DYSON

### SPONSOR STATEMENT (Prepared by the Department of Law)

**CS SB 135 (JUD)**—*“An Act relating to the crimes of assault and custodial interference; and providing for an effective date.”*

SB 135 is aimed to provide additional protection to Alaska's children, and was drafted by the Criminal Division of the Department of Law. The bill focuses on two crimes: assault and custodial interference.

**Assault.** Assault in the third degree concerns the reckless injury (of a young child) that *reasonably requires medical treatment*. The abuse that vulnerable infants and small children experience, however, is often difficult to accurately diagnose without extensive medical testing. In *Wells v. State*, 102 P.3d 972 (Alaska App. 2004), the Alaska court of appeals held that this diagnostic testing does not constitute “treatment.” In that particular case, the emergency room doctor found “numerous bruises” on the head of a 9-month old infant, so they ordered a CT scan and blood tests. Two doctors testified that the bruises could not have been caused by the infant banging his own head on the crib because he could not have generated enough force. The defendant was convicted by a jury, and the court of appeals reversed.

SB 135 proposes to change “reasonably requires medical treatment” to “would cause a reasonable caregiver to seek medical attention from a health care professional in the form of diagnosis or treatment.” This change is consistent with other statutes, such as criminal nonsupport—a misdemeanor for failure to provide a child with necessary “medical attention.” This phrase has been interpreted by Alaska courts as broader than mere “treatment,” because “children may suffer injuries sufficiently threatening to require a medical examination, even if that examination ultimately discloses no need for treatment.” *S.R.D. v. State*, 820 P.2d 1088, 1090-91 (Alaska App. 1991).

**Custodial Interference.** Parents who kidnap their children from the custodial parent keep them for long periods, and it is usually months before the children can be accounted for and the parents brought to justice. Often, the children are moved from place to place, kept out of public school, had their legal names changed, or taken out of state—to avoid being found. The kidnapper often defends his/her conduct by claiming that the child was being abused or neglected by the custodial parent, and therefore it was necessary to take the child. A “necessity” defense is allowed for many crimes (AS 11.81.320), but was not believed to be allowed in parental kidnapping cases until *Perrin v. State*, 66 P.3d 21 (Alaska App. 2003). Some boundaries to this defense are appropriate to reinforce custodial orders from the court and to stand against parents who inappropriately ‘take matters into his/her own hands.’

SB 135 proposes to recognize a limited “necessity” defense for parental kidnapping, but only if the parent holds the child for no longer than 24 hours, or the time necessary to contact authorities, whichever is shorter.

**SB**

**135**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/14/05

FURTHER:

REPORTED OUT

MAY 1 2005

SENATE FINANCE  
COMMITTEE

DATE TURNED  
IN TO OFFICE: 1 May 2005

Finance Committee considered                      SENATE BILL NO. 135

## SB 135 ASSAULT & CUSTODIAL INTERFERENCE

"An Act relating to the crimes of assault and custodial interference; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS SB 135 (JUD)
- 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	Ind.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Ind.	Zero	FN#
Admin	4/4/05			✓	#1
Court	4/1/05			✓	#2
Law	4/5/05				#3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
	✓		✓	
			✓	
COCHAIR:	X			
COCHAIR:	✓			

MAY 1 2005

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSSB 135(JUD)  
(S) Publish Date: 4/14/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title An Act relating to the crimes of RDU Legal and Advocacy Services  
assault and custodial interference. Component Public Defender Agency  
Sponsor Senator Dyson Component No. 1631  
Requester Senate Judiciary

**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	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type- Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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	0	0	0	0	0	0
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
This bill should have minimal fiscal impact on the operations of the Public Defender Agency. The Agency does not expect to handle a significant number of offenses covered under this proposed legislation.

Prepared by: Linda K. Wilson, Deputy Director Phone: (907) 334-4416  
Division: Public Defender Agency Date/Time: 4/14/05 8:54 AM  
Approved by: Michael Tibbles, Deputy Commissioner Date: 4/14/2005  
Agency: Department of Administration

**REPORTED OUT**  
  
**MAY 1 2005**  
  
**SENATE FINANCE  
COMMITTEE**

# FISCAL NOTE

**STATE OF ALASKA  
2005 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: CSSB 135(JUD)  
 (S) Publish Date: 4/14/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Assault and Custodial Interference BRU Alaska Court System  
 Component Trial Courts  
 Sponsor Senator Dyson Component No. 768  
 Requester \_\_\_\_\_

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)  
 The court system does not anticipate any fiscal impact from the passage of SB 135.

Prepared by Douglas Wooliver, Administrative Attorney Phone 463-4750  
 Division Alaska Court System Date/Time 4/14/05 8:21 AM  
 Approved by Doug Wooliver for Stephanie Cole, Administrative Director Date 4/14/05  
 Agency Alaska Court System

# FISCAL NOTE

REPORTED OUT  
MAY 1 2005  
SENATE FINANCE  
COMMITTEE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: CSSB 135(JUD)  
(S) Publish Date: 4/14/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title "An act relating to the crimes of assault and RDU CRIMINAL  
custodial interference..." Component Criminal Justice litigation  
Sponsor Senator Dyson  
Requester Senate Judiciary Component No. \_\_\_\_\_

**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						
<b>TOTAL OPERATING</b>						

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other - Regulatory Cost Charge						
<b>TOTAL</b>						

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 bill amends AS 11.41.220(a) (Offenses Against the Person - Assault in the third degree) by adding clarifying language regarding medical treatment when a child under the age of 10 years is assaulted by someone 18 years of age or older. It also amends AS 11.41.340 (Custodial Interference in the second degree) by further limiting instances of where a person may claim the defense of necessity.  
  
Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhotee, Director Phone 465-3673  
Division: Administrative Services Division Date/Time: 4/5/05 3:39 PM  
Approved by: Kathryn Daughhotee for David Marquez, Attorney General Date: 4/5/2005  
Agency: Department of Law



## SENATOR FRED DYSON

### SPONSOR STATEMENT (Prepared by the Department of Law)

*SB 135—An Act relating to the crimes of assault and custodial interference; and providing for an effective date.*

SB 135 is aimed to provide additional protection to Alaska's children, and was drafted by the Criminal Division of the Department of Law. The bill focuses on two crimes: assault and custodial interference.

**Assault.** Assault in the third degree concerns the reckless injury (of a young child) that *reasonably requires medical treatment*. The abuse that vulnerable infants and small children experience, however, is often difficult to accurately diagnose without extensive medical testing. In *Wells v. State*, 102 P.3d 972 (Alaska App. 2004), the Alaska court of appeals held that this diagnostic testing does not constitute "treatment." In that particular case, the emergency room doctor found "numerous bruises" on the head of a 9-month old infant, so they ordered a CT scan and blood tests. Two doctors testified that the bruises could not have been caused by the infant banging his own head on the crib because he could not have generated enough force. The defendant was convicted by a jury, and the court of appeals reversed.

SB 135 proposes to change "reasonably requires medical treatment" to "would cause a reasonable caregiver to seek medical attention from a health care professional in the form of diagnosis or treatment." This change is consistent with other statutes, such as criminal nonsupport—a misdemeanor for failure to provide a child with necessary "medical attention." This phrase has been interpreted by Alaska courts as broader than mere "treatment," because "children may suffer injuries sufficiently threatening to require a medical examination, even if that examination ultimately discloses no need for treatment." *S.R.D. v. State*, 820 P.2d 1088, 1090-91 (Alaska App. 1991).

**Custodial Interference.** Parents who kidnap their children from the custodial parent keep them for long periods, and it is usually months before the children can be accounted for and the parents brought to justice. Often, the children are moved from place to place, kept out of public school, had their legal names changed, or taken out of state—to avoid being found. The kidnapper often defends his/her conduct by claiming that the child was being abused or neglected by the custodial parent, and therefore it was necessary to take the child. A "necessity" defense is allowed for many crimes (AS 11.81.320), but was not believed to be allowed in parental kidnapping cases until *Peria v. State*, 66 P.3d 21 (Alaska App. 2003). Some boundaries to this defense are appropriate to reinforce custodial orders from the court and to stand against parents who inappropriately 'take matters into his/her own hands.'

SB 135 proposes to recognize a limited "necessity" defense for parental kidnapping, but only if the parent holds the child for no longer than 24 hours, or the time necessary to contact authorities, whichever is shorter.

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 3/8/05

FURTHER: Finance

Date of 5-Day Notice: 3/31/05  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 4/14/05

Judiciary Committee considered SENATE BILL NO. 135

**SB 135 ASSAULT & CUSTODIAL INTERFERENCE**

"An Act relating to the crimes of assault and custodial interference; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 135 (JUD)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>Senate Bill:</b>	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
ADM	4/4/05			✓	1
CRT	4/1/05			✓	2
LAW	4/5/05			✓	3

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
French	<i>[Signature]</i>			X	
Gues	<i>[Signature]</i>				X
Therriault	<i>[Signature]</i>			X	
Huggins	<i>[Signature]</i>			X	
CHAIR:	<i>[Signature]</i>	✓			

Seckins

**SB**

**1388**

**SFIN**

**FILE**

# SB 138

was referred to the  
Senate Finance  
Committee

No hearing was held  
on this bill

This bill was scheduled to be  
heard 4/30/05



Alaska State Legislature

Senator Con Bunde  
Senate District P

Vice Chair: Senate Finance Committee  
Chair: Senate Labor & Commerce Committee

## SB 138 Motor Vehicle Dealer Sales Sponsor Statement

*"An Act relating to a motor vehicle dealer's selling certain motor vehicles as new model motor vehicles or as new model motor vehicles having a manufacturer's warranty."*

In 2004, the Alaska Legislature passed HB 272, an Act relating to certain amendments to Alaska's Auto Dealer Act. Section 10 of the bill required the Department of Law to:

1. monitor and investigate consumer and enforcement problems associated with AS 08.66.015 that relate to the sale of new or current model motor vehicles; and
2. report to the legislature on the consumer and enforcement problems identified under (1) and include recommendations for resolving the problems.

The Department of Law submitted the report to the Legislature in January of 2005. The report indicated that there were consumer protection problems relating to warranty and odometer issues, and that enforcement of 08.66.015 would be more effective if the current law were amended.

This bill would amend AS 08.66.015 (a) by deleting the phrase "current model" and add a definition of a "new vehicle" generally consistent with the Department's recommendation.



# Alaska State Legislature

**Senate Majority** Web: [www.akrepublicans.org](http://www.akrepublicans.org)

**Sponsor:** LABOR & COMMERCE  
**Current Version:** SB 138  
**Contact:** Jane Alberts, 465-4843

## Fact Sheet for: Senate Bill 138

**Short Title:** MOTOR VEHICLE DEALER SALES

### Summary:

- Amends language in AS 08.66.015 by deleting the phrase "current model" and adding the definition of "new vehicle" to the statute.

### Benefits:

- Protects consumers who buy vehicles from independent auto brokers that were previously owned and may have had the odometer modified or replaced.
- Strengthens state's ability to enforce consumer complaints involving independent auto dealers.
- Ensures consumers will be protected on warranty issues when purchasing a new vehicle.

### Background:

- In 2004, the legislature passed HB 272. The law amended the Auto Dealers Act to help protect consumers purchasing new and used vehicles. The law also required the Alaska Department of Law to update lawmakers on any enforcement issues. A recent Department of Law report asked lawmakers to amend the law by deleting the phrase "current model" and adding a definition for new vehicle." Consumers are purchasing vehicles from independent dealers that were called "new" when in fact they had been previously sold and/or had the odometer replaced or modified. This bill protects consumers by clearly defining the term "new vehicle."

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

FRANK H. MURKOWSKI,  
GOVERNOR

DEPARTMENT OF LAW

1031 WEST 4<sup>TH</sup> AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-5903  
PHONE: (907)269-5100  
FAX: (907)276-8554

OFFICE OF THE ATTORNEY GENERAL

REPORT TO THE LEGISLATURE  
REGARDING AMENDMENTS TO AS 08.66.015

January 13, 2005

Background

At the end of the 2004 regular legislative session, the Alaska Legislature passed HB 272, an Act relating to certain amendments to Alaska's Auto Dealer Act. Section 10 of the bill requires the Department of Law ("Department") to: (1) monitor and investigate consumer and enforcement problems associated with AS 08.66.015 that relate to the sale of new or current model motor vehicles;<sup>1</sup> and (2) report to the legislature on or before January 24, 2005, on the consumer and enforcement problems identified under (1) and include a recommendation for resolving the problems. This Report discusses these issues and proposes amendments to AS 08.66.015.

AS 08.66.015 reads in its entirety as follows:

Sec. 08.66.015. Sale of motor vehicle. (a) A person who does business as a dealer in the state may not offer to sell or sell a motor vehicle as a new or current model motor vehicle unless the motor vehicle retains the manufacturer's certificate of origin.

(b) A person who does business as a dealer in the state may not offer to sell or sell a motor vehicle as a new or current model motor vehicle having a manufacturer's warranty unless

(1) the dealer has a current sales and service agreement with the manufacturer and the agreement requires the dealer, upon demand of the motor vehicle buyer, to perform or arrange for, within a reasonable distance of the dealer's place of business in the state, the repair and replacement work required of the manufacturer under the warranty; or

(2) the dealer offers to give the buyer a rebate to cover the repair and replacement work that the dealer cannot perform or arrange for within a reasonable distance of the dealer's place of business.

Accordingly, AS 08.66.015(a) prohibits the sale of a new *or* current model motor vehicle unless the motor vehicle retains the manufacturer's statement of origin, referred to as the "MSO." An MSO is issued for every new vehicle when it leaves the factory. When the vehicle is sold to the first purchaser, the MSO is delivered to the Division of Motor Vehicles ("DMV") as part of the application for a new title. Once titled, the MSO for the vehicle is retained by the DMV. No used current model vehicle will have an MSO. Thus, AS 08.66.015 prohibits the sale of any used current model vehicle in Alaska by any auto dealer.

There are a variety of circumstances under which an auto dealer may come into possession of a used current model vehicle. It may be purchased at an auction, from a rental fleet, from an individual consumer, or taken on trade. Regardless of how the vehicle is obtained, AS 08.66.015 prohibits all Alaska auto dealers from selling used current model vehicles.

#### Legislative History of AS 08.66.015

When enacting AS 08.66.015, the 1993 legislature did not discuss, and was likely not aware of, the result this language would have on the sale of used current model vehicles. AS 08.66.015 was added as part of a comprehensive bill (Senate Bill 105, and concurrent House Bill 164) aimed at regulating auto brokers. According to the bill's sponsor, Senator Robin Taylor, an auto broker operating in Southeast Alaska sold cars to several consumers then went out of business. Some consumers did not get the car they thought they purchased, did not receive titles, and had warranty problems. The auto broker was gone, and these consumers had no recourse.

In response to these problems, AS 08.66 was amended to define a "buyers agent" and regulate the conduct of these agents doing business in Alaska. A new section was added to AS 45.45 (now in AS 08.66) to require that buyer's agents obtain a license just like an auto dealer, and follow certain practices. Only limited discussion about the sale of "new or current model" vehicles occurred in the House Judiciary committee. Joe Ambrose, aid to Senator Taylor, testified the bill would prevent a car from being sold as new if it had been sold before. This was important, according to Mr. Ambrose, for warranty reasons. In this same