

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 86/2

9443 HOUSE STATE AFFAIRS

19

D. OPINION ON THE PROPOSED LEGISLATION

Generally speaking, I find this proposed legislation a breath of fresh air. It addresses most of the issues directly, clearly, and cogently.

If the Committee will indulge me, I would like to go through the sections of the bill and comment. There is room, I believe, for some improvement in a few places. These are not language changes and the suggestions are not semantic ones.

If after this is done and the Committee wishes to take these suggestions under advisement before passing out the bill, I will be happy to work informally with Committee staff on the bill if that would be useful.

[[go to bill and do the sections]]

What is the purpose of a regulation? Who does it serve? How?

The eight-fold path to regulatory bliss is found in the classic five questions of who, what, why, where, and when plus how, how much, and how much cost?

A Committee is directed by a good facilitator is often the best way to wring out these questions and get good or at least workable answers. HB 264 will allow the State of Alaska to do this effectively.

Draft suggestions for HB 264 from Robert Knight. 4/26/97

Page 2. Sec. 2. line 19. INSERT between the words 'resolve' and
'controversial'

the words: "technically complex or"

Page 2. Sec. 2. line 28. INSERT after the last word in the line as a new
sentence.

"Modifications must be timely distributed for comment to interested participants in the negotiated regulation group which developed the document modified."

Page 5. Sec. 2. line 5. INSERT a new subsection (8) to read

"When persons are known by a department or agency proposing regulations to have an interest in the proposed regulations or the subject of the proposed regulations, the agency or department may send direct notices to such persons but is under no obligation to do so generally."

Page 8. Sec. 2. line 18. INSERT a new subsection (3)

"The facilitator shall be employed by and paid under contract to the State of Alaska if not already employed by government and serving as a facilitator as a part of prescribed duties. Travel, per diem, and expenses shall be paid at standard rates."

E. CONCLUSIONS

The bill is an excellent one. Were it to go forward without my suggestions, it would succeed. I believe that DEC has had some experience with technical groups resolving technical issues prior to issuing regulations. If they have not been consulted, that experience might prove useful if incorporated into this bill or in a separate bill.

HB 264 has my full support.

Thank you for the opportunity to testify.

Legislative Research Services

Alaska State Legislature
Legislative Affairs Agency
Division of Legal & Research Services




130 Seward Street, Suite 218
Juneau, Alaska 99801-2196
Phone: (907) 465-3991
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April 10, 1997

MEMORANDUM

TO: Representative Jeannette James

FROM: Paul Brand 
Legislative Analyst

RE: **Negotiated Rulemaking: Drafting Regulations by Involving Affected Parties**
Research Request 97.080

You asked about negotiated rulemaking--the practice of involving affected parties in regulation drafting prior to the public comment period required under Alaska's Administrative Procedures Act. Specifically, you wanted to know if Alaska law currently permits this practice, and, if so, what methods various departments use to involve affected groups. You also wanted to know about similar practices used in other states and by the federal government. After a brief summary, this memorandum provides an overview of the negotiated rulemaking process, reviews Alaska's regulation drafting policies, and examines the negotiated rulemaking efforts in other states and by the federal government.

Summary

Negotiated rulemaking is a voluntary process for drafting regulations that brings together those parties affected by a rule for the purpose of reaching consensus on all or a portion of a proposed regulation before formally soliciting public comment.¹ Alaska's laws do not currently require or encourage the use of negotiated rulemaking, but some state agencies already use the process. Department of Environmental Conservation officials used negotiated rulemaking committees to help draft highly technical and contentious air and water quality regulations prior to completing the formal requirements of Alaska's Administrative Procedures Act. Department officials selected committee members and conducted meetings following the requirements of Alaska's Open Meeting and Public Records Acts. While many states informally solicit the ideas of affected

¹The content of negotiated rulemaking committee discussions as well as all documents used by its members become public records. This presents some limitations on the process because business and industry officials may be reluctant to divulge sensitive information during work group meetings because this material would be available to their competitors.

parties when drafting regulations, the use of formal negotiated rulemaking is a relatively new practice. Congress formally recognized negotiated rulemaking by passing the Negotiated Rulemaking Act of 1990. Since 1990, lawmakers in two states, Montana and Nebraska, have incorporated negotiated rulemaking acts into their statutes, encouraging agencies to use the practice whenever appropriate. According to federal and state officials with whom we spoke, negotiated rulemaking is appropriate for highly contentious regulations that affect a limited number of parties. To be successful, a negotiated rulemaking committee must be small enough to give its members an opportunity to communicate their concerns; committee size usually does not exceed 25 members. The goal of the committee is to reach consensus on all or a portion of a proposed regulation. Once the committee reaches consensus, the formal regulation adoption process often proceeds quickly as little public comment is received. Federal and state officials from agencies currently using negotiated rulemaking speak favorably of the process. The U.S. Environmental Protection Agency and the U.S. Department of Labor, the agencies with the most experience in negotiated rulemaking, report reduced litigation costs and enhanced relations with industry officials, environmental advocates, and labor relations groups.

Overview of Negotiated Rulemaking

Negotiated rulemaking is a technique for drafting regulations that brings together those parties directly affected by a proposed rule, in a committee, to resolve particularly contentious or controversial issues prior to the formal regulation adoption process. After identifying a particularly contentious regulation that affects a limited number of parties, agency officials publish notice of their intent to form a negotiated rulemaking committee. The agency director selects the committee members from responses to the public notice and appoints a neutral mediator to oversee the committee's meetings.² The committee's goal is to reach a consensus decision on a proposed regulation.³ Once the committee reaches consensus, the agency uses the committee's proposals when completing the formal regulation drafting requirements.

It is important to note that the agency first completes the negotiated rulemaking process and then begins the formal regulation drafting process. In doing so, negotiated rulemaking does not conflict with the formal regulation drafting practices used by most states and the federal government. Negotiated rulemaking is a preparatory process used to resolve controversial issues prior to the commencement of formal rulemaking.

²The committee's meetings are open to the public and all records, reports, and research used by the committee are made available for public review.

³If the committee cannot reach consensus on the entirety of a rule, they prepare a report for the agency detailing areas of agreement and dispute. Agency officials then would be responsible for drafting the final regulation.

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During the formal regulation adoption process, the agency may change the committee's proposed regulation based on public comment. This requirement preserves the rights of private citizens to testify on proposed regulations. One of the advantages of negotiated rulemaking is that the public comment period normally proceeds smoothly because the committee has already resolved many potentially sensitive issues. Additionally, negotiated rulemaking may reduce the cost of litigation by resolving the concerns of industry and other parties without the need for judicial review.

Some federal and state agencies have criticized negotiated rulemaking because the process requires additional agency resources for the regulation drafting process. Hiring a neutral mediator and devoting agency resources to the committee process are costs not generally associated with regulation drafting.⁴ Officials of federal agencies that regularly use negotiated rulemaking committees defend these added costs by comparing the cost of negotiated rulemaking committees to that of litigation.

Alaska's Regulation Drafting Practices and Negotiated Rulemaking

The Alaska Department of Law publishes a manual for drafting administrative regulations which thoroughly describes the regulation adoption process required under Alaska's Administrative Procedures Act (APA).⁵ According to Deborah Behr, Assistant Attorney General, Alaska's APA does not specifically address the issue of negotiated rulemaking because this method of developing regulations has only recently become popular. While negotiated rulemaking is not formally identified in the APA, Ms. Behr indicated that some state departments have used similar techniques when developing regulations.⁶

According to John Stone, Environmental Conservation Manager for the Department of Environmental Conservation's Division of Air and Water Quality, the department has used

⁴The expenses of committee members, other than agency personnel, are not generally paid by the state. Members are responsible for their own travel and lodging costs when attending committee meetings. All the negotiated rulemaking acts we reviewed, however, allow the state to pay travel and per diem expenses for committee members if they are unable to afford the cost and their presence is vital to the committee's success.

⁵Alaska Department of Law, "Drafting Manual for Administrative Regulations," October 1995, p.8. Attachment A is a copy of a flow chart that describes the steps followed by department officials when they prepare regulations.

⁶Ms. Behr stated that negotiated rulemaking committees, under current state law, must develop regulation proposals prior to the formal notice-and-comment period required under the Alaska's APA. Additionally, the committees must follow the provisions of Alaska's Open Meetings and Public Records Acts (AS 44.62.310 and AS 9.25.110).

negotiated rulemaking to draft air and water quality regulations. These regulations are often highly technical and involve numerous interest groups. Because of the technical nature of many regulations, Mr. Stone feels that the use of negotiated rulemaking not only results in a consensus decision with affected parties, but also allows department officials to thoroughly explain the complexity of many regulations. Mr. Stone stressed that a consensus does not always result in the complete satisfaction of committee members, but generally the final regulations are responsive to their concerns.

Negotiated Rulemaking in Other States

According to Brenda Erickson, regulation specialist with the National Conference of State Legislatures (NCSL), many states informally solicit information from affected groups when drafting regulations, but the use of formal negotiated rulemaking committees is a relatively new practice. Based on the results of a Westlaw search and discussions with regulation specialists from NCSL, we identified two states, Montana and Nebraska, that have incorporated negotiated rulemaking acts into their state statutes.⁷ The Negotiated Rulemaking Acts of both states are similar to each other and provide a means of resolving potentially controversial issues prior to formal rulemaking procedures.⁸

The statutes of both states clearly recognize that the use of negotiated rulemaking committees are appropriate only in certain circumstances; consequently, both states' statutes contain nearly identical lists of criteria that agency directors must consider when determining if negotiated rulemaking is appropriate. Among those criteria, the agency directors must consider if:

- There are a limited number of identifiable interests that will be significantly affected by the rule;
- There is a reasonable likelihood that the agency can convene a committee that provides balanced representation of the affected parties;
- There is a reasonable likelihood that the committee will reach consensus on the proposed regulation; and

⁷Attachments B and C are copies of the Negotiated Rulemaking Acts of Montana and Nebraska, respectively.

⁸Nebraska's Negotiated Rulemaking Act differs from Montana's in that it specifically prohibits individuals incarcerated in correctional institutions from requesting the use of negotiated rulemaking.

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- The agency has adequate resources and is willing to commit those resources to the negotiated rulemaking committee.

According to Annette Covar of Nebraska's Department of Environmental Quality (DEQ), the department has used negotiated rulemaking techniques in drafting several environmental regulations. She indicated that the expense of a mediator makes negotiated rulemaking impractical in many situations, but for complex regulations the practice has proven valuable. She also stated that DEQ used informal negotiated rulemaking techniques prior to Nebraska's law and they continue to do so for many regulations. Ms. Covar views negotiated rulemaking techniques as valuable whether or not the agency establishes a formal committee.

In Montana, lawmakers are encouraging the use of negotiated rulemaking by all departments. According to Todd McMaster of Montana's Office of Legislative Research, negotiated rulemaking has been used successfully by several departments. Mr. McMaster stated that the Montana Consensus Council, located in the governor's office, provides mediators for negotiated rulemaking committees and training to state agencies that are developing negotiated rulemaking procedures.

We asked the Montana Consensus Council to send us information on their agency education initiatives. We will review and forward this information to you as soon as it is available.

Negotiated Rulemaking in Federal Agencies

Federal agencies began experimenting with negotiated rulemaking in the early 1980s, but it was not until federal lawmakers passed the Negotiated Rulemaking Act of 1990 that agencies used the practice with frequency (Attachment D).⁹ The number of regulations drafted using negotiated rulemaking is increasing, but many agency officials continue to show reluctance. A comprehensive review of negotiated rulemaking by the John F. Kennedy School of Government at Harvard University attributes this reluctance to the recency of the new legislation and the limited number of regulations for which negotiated rulemaking is appropriate.¹⁰

Among those federal agencies that routinely use negotiated rulemaking, the Environmental Protection Agency and the Department of Labor have done so most frequently. Based on agency

⁹Attachment D contains a copy of the Negotiated Rulemaking Act of 1990 (5 USC § 561 through § 570).

¹⁰Coglianes, Cary (no date), *Assessing Consensus: The Promise and Performance of Negotiated Rulemaking*[Online]. Available on the World Wide Web at internet address <http://www.ksg.harvard.edu/prg/coglianes/rulemake.htm> [accessed April 9, 1997].

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reports, these departments have had successful negotiated rulemaking experiences.¹¹ The agencies report reduced litigation costs, increased industry compliance with regulations, and enhanced working relationships with industry officials, environmental advocates, and labor relations groups.

Currently, we are in the process of obtaining additional information on federal negotiated rulemaking practices, including a negotiated rulemaking handbook from the U.S. Department of Labor. We will forward this information to you once it arrives.

I hope this information is useful for your purposes. Please do not hesitate to contact me if you have additional questions.

Attachments

¹¹United States Department of Labor, June 27, 1996, *OSHA Chief Lauds "Negotiated Rulemaking" As a Way to Cut Red Tape and Bureaucracy* [Online]. Available on the World Wide Web at <http://www.osha.gov/media/oshnews/june96/osha96-253.html> [accessed April 2, 1997].

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 264

Revision Date: _____ Dept. Affected: All departments except Revenue
 Title: An Act providing for a negotiated rulemaking BRU: _____
process. Component: _____
 Sponsor: Rep. James
 Requester: House State Affairs Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	***	***	***	***	***	***

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						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill would authorize state agencies to use a negotiated rulemaking process. Use of this process would not be mandatory, and would depend on a determination by agencies that such a process would be in the public interest, based on several factors listed in the bill.

The asterisks on this fiscal note indicate that the fiscal impact of the bill is indeterminate. Further analysis and clarification of the scope of the bill is necessary to determine the extent to which negotiated rulemaking would be used and the cost of the process.

Prepared by: Annaloe McConnell *for Annaloe McConnell* Phone: 465-4660
 Division: Office of Management and Budget Date: 5/5/97
 Approved by Commissioner: Jim Ayers, Chief of Staff *J. Ramsey* Date: 5/5/97
 Agency: Office of the Governor

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB264

Revision Date: _____ ept. Affected: Health and Social Services
 Title: An Act providing for a negotiated regulation making process BRU: Administrative Services
 Sponsor: Rep. James Component: Administrative Support Services
 Requestor: House (STA) COMPONENT SERIAL NO. 320
 See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0					
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

The use of the negotiated regulation making process that this bill establishes would be discretionary. One of the factors that an agency could consider in determining whether to use the process is its ability and willingness to commit resources. The Department would not, therefore, be obligated to engage in negotiated regulations making if resources were not available. Thus there is no direct fiscal impact on the Department.

5/1/97
 Prepared by: Janet Clarke
 Division: Div. Admin Services
 Approved by Commissioner: Karen Perdue, Commissioner
 Agency: Department of Health & Social Services

Phone: 465-3082
 Date: 05/01/97
 Date: 5/1/97

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HB

265

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 28, 1997

FURTHER REFERRALS:

Date of Committee Action: 5/8/97

The STATE AFFAIRS Committee considered:

HB 265

HOUSE BILL NO. 265

REPORTS & RECORDS OF & TO STATE AGENCIES

"An Act relating to pamphlets, publications, plans, and records of state agencies; and relating to reports to and from state agencies and the governor."

recommends it be replaced with the following committee substitute CS HB 265 (STA) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) DEC, CED zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Janette James</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			

CHAIR'S SIGNATURE *Janette James*

REPRESENTATIVE
TERRY MARTIN
VICE-CHAIRMAN
BUDGET & AUDIT COMMITTEE
MEMBER
HOUSE FINANCE COMMITTEE

Alaska State Legislature



MAY 15 - JAN 15 258-8169
716 W. 4TH, SUITE 650
ANCHORAGE, AK 99504
JAN 15 - MAY 15 465-3783
STATE CAPITOL
JUNEAU, AK 99801-1182

Sponsor Statement

HB 265

"An act relating to pamphlets, publications, plans and records of state agencies; and relating to reports to and from state agencies and the governor."

Just as the operating budget is made up of thousands of small parts, so too, can the legislature cut the budget by eliminating or repealing some of those small parts. That is simply what HB 265 seeks to do, by repealing or amending statutes that require state agencies to issue certain reports or information. HB 265 does not delete every report or informational bulletin that originates in the auspices of the state. Instead, it eliminates reporting requirements that are duplicated by other sections of law, are unnecessarily burdensome and costly, or which no longer serves a public purpose.

HB 265 sprang from a report first issued in 1991 by the Office of Management and Budget on needless reporting requirements, which was again updated by OMB earlier this year.

While the reports eliminated by HB 265 represent only a small fraction of the state's operating budget, HB 265 alleviates useless expenditures incurred by the state while cleaning up the statutes at the same time.



LEGAL SERVICES

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STATE OF ALASKA

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

May 1, 1997

SUBJECT: Sectional Summary of HB 265. (Agency reports, publications, and records)

TO: Representative Terry Martin
Attn: John Manly

FROM: Terri Lauterbach
Legislative Counsel *TLauterbach*

You have requested a sectional summary of the above-described bill.

As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, let me know.

Section 1. Repeals the Board of Barbers and Hairdressers' annual report on its operations.

Section 2. Technical corrections corresponding to the repeal of AS 08.24.220 in sec. 20.

Section 3. Same as sec. 2.

Section 4. Changes a biennial report by the University into an annual report and adds to the reporting requirement the information currently required under AS 37.25.010(d), which is amended in sec. 10.

Section 5. Eliminates two reports by the Alaska Public Offices Commission.

Section 6. Eliminates a DHSS report concerning funding needs for the community health aide grant program.

Section 7. Technical change corresponding to the repeal of AS 21.84.340(b) in sec. 20.

Section 8. Changes an APOC report requirement to be biennially, rather than quarterly and annually.

Representative Terry Martin

May 1, 1997

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Section 9. Eliminates a DOT/PF reporting requirement on upgrades already made and still needed to implement accessibility standards.

Section 10. Provides for this information from the University to be included in a different report.

Section 11. Eliminates a personnel division report on nonpermanent and emergency hires.

Section 12. Technical correction corresponding to the repeal of AS 43.76.030 in sec. 20.

Section 13. Technical correction corresponding to the repeal of AS 44.42.055 in sec. 20.

Section 14. Eliminates a C&RA report on the statement of accounts for villages under the municipal lands trust.

Section 15. Eliminates a DEC report on use of the Alaska Clean Water Fund.

Section 16. Eliminates a requirement that state agencies cannot get money from the hazardous substance release prevention and response fund unless they provide information needed for a report.

Section 17. Changes a DEC annual report on activities of the oil and hazardous substance release prevention and response fund to a biennial report.

Section 18. Changes a governor's annual report on activities of the oil and hazardous substance release prevention and response fund to a biennial report.

Section 19. Changes an annual report on the foster care review system into a biennial report.

Section 20. Repeals the following statutes:

AS 08.04.070(g) - Board of Accountancy annual report

AS 08.24.071 - Collection agencies' annual directory

AS 08.24.220 - Collection agency employee list

AS 08.36.070(a)(3) - Board of Dental Examiners report

AS 08.48.071(c) - AELS Board annual report

AS 08.48.101(b) - AELS Board report

AS 08.63.050(8) - Board of Marital/Family Therapy report

AS 08.64.101(3) - State Medical Board report

AS 08.65.030(a)(6) - Direct-Entry Midwives report

AS 08.68.100(a)(7) - Board of Nursing report

AS 08.84.010(b)(6) - Physical Therapy Board report

AS 08.86.070(7) - Psychologists Board report

AS 08.95.030(2) - Clinical Social Workers Board report

Representative Terry Martin

May 1, 1997

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AS 08.98.050(a)(7) - Veterinarian Board report
AS 14.07.181 - State Board of Education pamphlet on drugs
AS 14.40.170(a)(9) - University report on lands
AS 14.40.296(b) - University report on a reserve fund
AS 14.40.455(e) - University report on risk fund
AS 14.56.182 - 190 - Alaska Blue Book
AS 16.51.100(5) - ASMI report
AS 18.20.150(b) - State medical facilities annual plan
AS 18.85.160(b) - Public Defender Agency report
AS 21.39.175 - medical malpractice insurers' reports
AS 21.84.340(b) - report of fraternal benefit societies
AS 36.30.540(2), (3) and (6) - GSS procurement reports
AS 37.05.030(b) - agency financial reports
AS 37.05.035 - DOA consolidated report of agency reports
AS 42.45.020(e)(3) - rural electrification loan report
AS 43.76.030 - aquaculture association reports
AS 44.42.055 - DOT/PF facility procurement plan

TML:glc
97-288.glc

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 5, 1997

Honorable Jeanette James
Representative
Chairperson
House State Affairs Committee
State Capitol, Room 102
Juneau, Alaska 99801

Re: HB 265

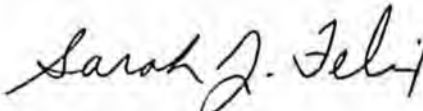
Dear Representative James:

We have reviewed HB 265, and find that it presently presents no legal problems.

Please contact me if I can be of further assistance to you on this matter.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Sarah J. Felix
Assistant Attorney General

SJF:clh

cc: Pat Pourchot
Legislative Director
Office of the Governor

Chrystal Smith
Legislative Liaison
Department of Law

Deborah Behr
Assistant Attorney General

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907)269-5100
FAX: (907)276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907)451-2811
FAX: (907)451-2846

P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-6735

Reports Departments Determined are Unnecessary

Dept.	Division	Statutory Reference	Report Requirement	To Whom	By	Prior Recommendation	Current Recommendation
DOA	APOC	15.13.030	Report on non-compliance. (7) report ... the names of all persons and groups who have failed to comply with any of the provisions of this chapter...	Attorney General	Within 60 days of election	Report unnecessary- reported under other sections of law.	Report determined unnecessary.
DOA	APOC	15.13.030	Report of violations. (8) examine, investigate, and compare all reports, statements, and actions required by this chapter, AS 24.45, and AS 39.50 and report ... the names of all persons or groups that the commission has substantial reason to believe have violated this chapter, AS 24.45 or AS 39.50;	Attorney General	Not specified	Report unnecessary- reported under other sections of law.	Report determined unnecessary.
DOA	Public Defender Agency	18.85.160	Public Defender report showing number of persons represented, crimes involved, the outcome of each case and the expenditures made in carrying out the agency responsibilities.	Supreme Court / Notify Legislature report is available	Not stated	Department feels annual report is necessary.	Report to the Supreme Court can be continued, but is hardly necessary. The Alaska Court System does appoint cases, but has no oversight responsibilities, so crime, outcome, and expenditures are for informational purposes only.
DOA	DGS	36.30.540	General services and supply biennial procurement report. The commissioner shall biennially prepare a report concerning procurements by agencies and notify the legislature that the report is available.	Notify Legislature that report is available	Not stated	Report not necessary- records of exceptions would still be maintained.	These reports have not been requested by the legislature. Reports required by AS 36.30.540(2)(3) and (6) appear unnecessary. Several of the specific record keeping requirements are not up to date due to limited staff resources and other priorities. Of the various reports required under 540 only (1), (4) and (5) would appear to have interest in retaining. These suspending compile information on types of procurements that occurred and instae vs. out of state awards.
DOA	Finance	37.05.030	DOA shall require all state agencies to prepare financial reports and statements together with a narrative summary not exceeding 1,000 words at least 60 days before legislative session. DOA shall submit a consolidated report to the legislature.	Notify Legislature report is available	Before 11th day of session	N/A	Report is unnecessary, information is in AKSAS.
DOA	Finance	37.05.035	Each state agency which makes or purchases a loan shall prepare an annual report of the aggregate of all loans, by type made or purchased during the last year.	Notify Legislature report is available	By January 30	Not reported.	Report is unnecessary.
DOA	Personnel	39.25.195	Personnel nonpermanent and emergency report. (h) The director shall prepare a report on nonpermanent and emergency hire practices in state government...	Notify Legislature report is available.	Within 1st 10 days of each regular Legislative session	Report determined unnecessary.	Does not appear to be a worthwhile report. It has only been requested once.
DCED	Occupational Licensing	08.04.070	Board of Accountancy annual report. (g) The board shall submit an annual containing: (1) a statement of the board's purpose and goals for the year; (2) programs planned by the board; (3) statistics relating to operations, (4) significant developments and concerns of the board; (5) amendments offered and adopted to regulations; (6) proposed statutory changes; (7) member participation and appointment status; and (8) budget information.	Governor	Not stated	Report biennially.	Delete this report as annual report of state boards (AS 08.01.070) applies.

DCED	Occupational Licensing	08.13.050	Board of Barbers and Hairdressers annual report. The board shall submit an annual report on its operations.	Governor	Not stated	Report biennially.	Revise statute to delete report requirement. Delete only last sentence of statute.
DCED	Occupational Licensing	08.24.071	Collection agencies annual directory. The department shall publish a directory containing a list of licensed collection agencies that specifies as to each agency its owners and officers and the names of its licensed operator or operators, together with other matters pertinent to the general purposes of this chapter.	Public / Court	On/About August 1 of each year	Report biennially.	Delete this report. Roster is maintained per 08.01.050 (a) (12).
DCED	Occupational Licensing	08.24.220	Semi-annual employee list. (a) Every collection agency licensee shall file with the department ... a list of the names and residence addresses of each person employed by the licensee in the six-month period ending 10 days before the due date of the report.	DCED	June 1 & December 1	Report biennially.	Delete this report. Determined unnecessary for regulation of collection agencies.
DCED	Occupational Licensing	08.36.070	Board of Dental Examiners annual report. (3) report annually ... on the board's proceedings during the year, findings concerning the standards and availability of dental services in the state including the number of licensees, examination, and licensing activities, other matters related to dental practice, and board receipts and expenditures;	Governor and DCED	Not stated	Report biennially.	Delete this report as annual report of state boards (AS 08.01.070) applies.
DCED	Occupational Licensing	08.48.071	Architects, engineers and land surveyors annual report. (c) Annually ... the board shall submit to the governor, and notify the legislature about the availability of, (1) a report of its transactions of the preceding year; (2) a complete statement of the receipts and expenditures of the board, attested by affidavits of its president and its secretary; (3) a report of attendance of members of the board at meetings of the board; (4) a list of the regulations adopted, amended, or repealed since the last report; (5) a report of the current purposes and goals of the board; and (6) a report of significant developments in the field of architecture, engineering, or land surveying of concern to the board.	Governor / Notify Legislature report is available	End of Fiscal Year	Report biennially.	Delete this report as annual report of state boards (AS 08.01.070) applies.
DCED	Occupational Licensing	08.48.101	Architects, engineers and land surveyors regulations, bylaws and code of ethics published in the annual report. (b) The regulations, bylaws and code of ethics or professional conduct adopted by the board shall be published in the annual report to the governor.	Governor	End of Fiscal Year	Report biennially.	Delete 08.48.101 (b). Statute and regulation books are published and distributed on request all year long.
DCED	Occupational Licensing	08.63.050	(8) report annually ... on the board's proceedings each year; the report must include the number of licensure applicants, the number of examinations conducted, the failure rate for each examination, a financial report, and other information requested by the department;	Governor / DCED	Not stated	Not on prior listing.	Delete this report as annual report of state boards (AS 08.01.070) applies.
DCED	Occupational Licensing	08.64.101	State Medical Board annual report. (3) submit an annual report of its proceedings including a statement of money received and disbursed;	Governor	Not stated	Report biennially.	Delete this report as annual report of state boards (AS 08.01.070) applies.
DCED	Occupational Licensing	08.65.030	(a) (6) report annually to the governor and the department on the board's proceedings during the year;	Governor / DCED	Not stated	Not on prior listing.	Delete this report as annual report of state boards (AS 08.01.070) applies.

DCED	Occupational Licensing	08.68.100	(a) (7) keep a record of its proceedings, and submit annual reports to the governor and legislature;	Governor / Legislature	Not stated	Not on prior listing.	Delete this report as annual report of state boards (AS 08.01.070) applies.
DCED	Occupational Licensing	08.84.010	Physical Therapy and Occupational Therapy Board annual report. (b) (6) keep a record and minutes of its meetings, proceedings, and hearings and submit an annual report of its activities to the governor and other interested parties;	Governor	Not stated	Report biennially.	Delete this report as annual report of state boards (AS 08.01.070) applies.
DCED	Occupational Licensing	08.86.070	Psychologists and Psychological Associates Board activity report. (7) prepare an annual report for covering board activities, the number of applicants, the number of examinations conducted, the passing and failure rate of each examination, finances, and other information as requested by the department;	DCED	Not stated	Report biennially.	Delete this report as annual report of state boards (AS 08.01.070) applies.
DCED	Occupational Licensing	08.95.030	Board of Clinical Social Work Examiners annual report. (2) submit an annual report of its proceedings	DCED	Not stated	Report biennially.	Delete this report as annual report of state boards (AS 08.01.070) applies.
DCED	Occupational Licensing	08.98.050	Board of Veterinarian Examiners annual report. (7) prepare and submit an annual report containing information concerning board activities, the number of examinations held, the number of applicants for examination, the number of persons who pass and the number who fail each examination, financial data, including receipts and expenditures, and other information which the department may require;	DCED	Not stated	Report biennially.	Delete this report as annual report of state boards (AS 08.01.070) applies.
DCED	ASMI	16.51.100	Alaska Seafood Marketing Institute is to submit an annual report describing the activities of ASMI.	Governor/ Notify Legislature report available.	Not stated	Department feels annual report is necessary.	Statutorily requiring the report is not necessary if it would be desirable to delete the reference. AMSI annual report has been incorporated into a newsletter that is sent to fisherman and processors and shared with interested parties, i.e., Legislators. ASMI would continue to provide an annual update to the board and industry.
DCED	Division of Insurance	21.39.175	An insurer providing malpractice coverage for health care shall report annually on number and amounts of claims filed, reserved, paid, settled and adjudicated. This report is to be made available to the public and the State Medical Board.	Public / DCED	Not stated	Not reported.	Eliminate the requirement.
DCED	Division of Insurance	21.84.340	Fraternal Benefit Societies. Every society transacting business in Alaska shall file a true statement of its financial condition, transactions and affairs for the preceding calendar year and pay a fee.	DCED	Before March 2	Not reported.	Eliminate the requirement.
DCED		43.76.030	Regional aquaculture association requesting state assistance under 43.76.025 (salmon enhancement tax) submit annual financial report and an annual budget. Regulation 03 AAC 089 0120 specifies report must be filed within 120 days after end FY	DCED	To be specified by DCED	N/A	Department no longer feels report is necessary.
DCRA	Division of Energy	42.45.020	(c) (3) have available a report of actions taken by the department under this section and an accounting of the rural electrification revolving loan fund; the department shall notify the legislature that the report is available.	Notify the Legislature the report is available.	Within 10 days of each regular legislative session.	Not on prior report listing.	Department feels this report is no necessary- the small level of program activity does not warrant a statutorily required annual report. Funds are no longer available under this program for new loans and no new loans

							have been made for many years. The only accounting activity is interest received each year from several outstanding loans. The report now consists essentially of a single page. The department will continue to maintain accounting for this program as long as there is any activity and is prepared to report on this activity at any time.
DCRA		44.47.150	Municipal Lands Trust. (d) Separate accounts shall be maintained in the name of each village for the land, including the revenues from the land, acquired from each village corporation under this section, and ... a statement of the account for each municipality shall be prepared by the commissioner and be made available to the village and to the public upon request.	Public / Villages	Every two years within 90 days of the second state FY	Department fee! annual report is necessary.	Department feels this report is not necessary. Little demand for publication. The department continues to maintain accounts for each village and believes it would be adequate to notify each effected village each year of the status of that village's trust lands. A member of the public could contact the department and request any specific information needed.
DOE	State Board of Education	14.07.181	The board shall direct the department to develop, adopt, periodically review, and distribute annually to each student enrolled in a public school an information pamphlet.	Each child in Alaska schools	Annually	Not on prior listing.	Repeal statute. Not provided for two years as funding reduced by legislature.
DOE	AK State Libraries	14.56.182 - 14.56.185	The division of state libraries shall compile and issue biennially, beginning in 1973, an official directory of all state officers, state departments, agencies, institutions, boards and commissions, and municipal officials, to be known as the Alaska Blue Book.	Legislature, schools, etc.	Biennially	Not on prior listing.	Repeal statutes. Legislature defunded two years ago.
DEC		46.03.032	Alaska Clean Water Fund. Provide to the legislature a biennial report.	Legislature	Biennial report on/before 1st day of each first regular session of the Legislature	Necessary, biennial acceptable. <i>Recommendation adopted. Statute revised.</i>	This report is not necessary for the legislature, and the requirement for it could be deleted.
DH&SS		18.20.150	Statewide medical facilities annual plan. (b) The department shall prepare and submit to the surgeon general a state plan, including the hospital and medical facilities, community mental health centers, and facilities for the mentally retarded construction program developed under (a) of this section	Public / Federal Government	Not stated	Report not necessary (department does not recommend statute change as it serves as a place-holder for a future, similar federal program).	Report not necessary.
DH&SS	Public Health	18.28.030	Community Health Aide Program, Community Health Aide Grant Account. DHSS shall determine the amount of money needed to fully fund grants (18.28.010) and contracts (18.28.020(3)) for the next year and report that to the legislature.	Legislature	Not stated	Department feels annual report is necessary.	Report is unnecessary.
DOTPF		35.10.015	DOT/PF adopt and enforce regulations governing construction of public buildings & develop and maintain inventory of all public buildings. Report annually describing work performed to upgrade public buildings to conform with regulations.	Governor / Notify Legislature report available.	Not stated	N/A	Not funded. Report not necessary.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

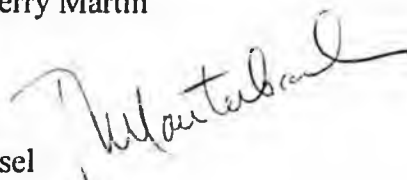
MEMORANDUM

May 5, 1997

SUBJECT: Agency reports, pamphlets, etc. (CSHB 265(), "E" Version)

TO: Representative Terry Martin
Attn: Chris

FROM: Terri Lauterbach
Legislative Counsel



Enclosed is the CS you requested.

The only changes made, compared to the original bill, are on page 9, line 19. Instead of repealing AS 37.05.030(b), all of AS 37.05.030 is repealed in the CS. Also, the original bill repealed AS 37.05.035; this CS does not repeal that section.

Please let me know if you have further questions.

TML:jdr
97-329.jdr

Enclosure

0-LS0927AE
Lauterbach
5/5/97

CS FOR HOUSE BILL NO. 265()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MARTIN, Dyson, Ryan, Cowdery, Kott, Davies

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to pamphlets, publications, plans, and records of state agencies;
2 and relating to reports to and from state agencies and the governor."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 08.13.050 is amended to read:

5 Sec. 08.13.050. Records of the board. The Department of Commerce and
6 Economic Development shall keep a record of the board's proceedings related to the
7 issuance, refusal, suspension, and revocation of each license and permit. The record
8 shall contain the name of the person to whom a license or permit is issued, the
9 person's place of business, the date of issuance for each license and permit, and
10 whether it is currently valid. The record shall be open to inspection by the public at
11 all reasonable times. [THE BOARD SHALL SUBMIT AN ANNUAL REPORT ON
12 ITS OPERATIONS TO THE GOVERNOR.]

13 * Sec. 2. AS 08.24.240 is amended to read:

14 Sec. 08.24.240. Failure to file statement. If the annual statement of

1 collection [OR SEMIANNUAL STATEMENT OF EMPLOYEES] is not filed as
2 required under AS 08.24.210 [AND 08.24.220], the failure to file constitutes grounds
3 for the immediate suspension of the collection agency license of the licensee failing
4 to file the statement, and the department shall notify the licensee by registered or
5 certified mail that the license of the licensee will be suspended upon the expiration of
6 15 days after the date on which the notice was mailed unless the licensee complies
7 with the provisions of AS 08.24.210 [OR 08.24.220]. However, for good cause shown
8 and upon satisfactory proof furnished by the licensee that the failure to file the
9 statement was due to a condition not within the control, or was due to excusable
10 neglect, of the licensee, the department may permit the filing of the statement after the
11 time limited and excuse the failure to file the statement within the time limited. If the
12 statement required by AS 08.24.210 [OR 08.24.220] is not filed as required by this
13 section, the department shall revoke the license.

14 * Sec. 3. AS 08.24.250 is amended to read:

15 **Sec. 08.24.250. Information confidential.** Except as otherwise provided in
16 this chapter, information in whatever form required to be filed by the terms of
17 AS 08.24.210 [AND 08.24.220] shall be confidential and may not become a public
18 record, but it may be introduced in evidence in a suit, action, or proceeding in a court
19 or in a proceeding involving the granting or revocation of the license of a licensee.

20 * Sec. 4. AS 14.40.190 is amended to read:

21 **Sec. 14.40.190. Report.** The Board of Regents shall prepare a written report
22 at the beginning of each [FIRST] regular session of the legislature of the condition of
23 the university property, of all receipts and expenditures, including the administration
24 and disposition of appropriated and restricted funds and information required under
25 AS 37.25.010(d), and of the educational and other work performed during the
26 preceding [TWO] fiscal year [YEARS]. The board shall notify the legislature that the
27 report is available.

28 * Sec. 5. AS 15.13.030 is amended to read:

29 **Sec. 15.13.030. Duties of the commission.** The commission shall

30 (1) develop and provide all forms for the reports and statements
31 required to be made under this chapter, AS 24.45, and AS 39.50;

1 (2) prepare and publish a manual setting out uniform methods of
2 bookkeeping and reporting for use by persons required to make reports and statements
3 under this chapter and otherwise assist candidates, groups, and individuals in
4 complying with the requirements of this chapter;

5 (3) receive and hold open for public inspection reports and statements
6 required to be made under this chapter and, upon request, furnish copies at cost to
7 interested persons;

8 (4) compile and maintain a current list of all filed reports and
9 statements;

10 (5) prepare a summary of each report filed under AS 15.13.110 and
11 make copies of this summary available to interested persons at their actual cost;

12 (6) notify, by registered or certified mail, all persons who are
13 delinquent in filing reports and statements required to be made under this chapter;

14 (7) [REPORT WITHIN 60 DAYS AFTER THE ELECTION THE
15 NAMES OF ALL PERSONS AND GROUPS WHO HAVE FAILED TO COMPLY
16 WITH ANY OF THE PROVISIONS OF THIS CHAPTER TO THE OFFICE OF THE
17 ATTORNEY GENERAL;

18 (8)] examine, investigate, and compare all reports, statements, and
19 actions required by this chapter, AS 24.45, and AS 39.50 [AND REPORT TO THE
20 ATTORNEY GENERAL THE NAMES OF ALL PERSONS OR GROUPS THAT
21 THE COMMISSION HAS SUBSTANTIAL REASON TO BELIEVE HAVE
22 VIOLATED THIS CHAPTER, AS 24.45 OR AS 39.50];

23 (8) [(9)] prepare and publish a biennial report concerning the activities
24 of the commission, the effectiveness of this chapter, its enforcement by the attorney
25 general's office, and recommendations and proposals for change; the commission shall
26 notify the legislature that the report is available;

27 (9) [(10)] adopt regulations necessary to implement and clarify the
28 provisions of AS 24.45, AS 39.50, and this chapter, subject to the provisions of
29 AS 44.62 (Administrative Procedure Act).

30 * Sec. 6. AS 18.28.030(b) is amended to read:

31 (b) Each fiscal year, the department shall determine the amount of money

1 needed to fund all grants under AS 18.28.010 and contracts under AS 18.28.020(3)
2 during the next fiscal year [AND SHALL REPORT THAT AMOUNT TO THE
3 LEGISLATURE]. If the amount appropriated to the account is not sufficient to
4 finance all grants and contracts, the money shall be distributed pro rata among
5 qualified regional and local health organizations.

6 * Sec. 7. AS 21.84.350(a) is amended to read:

7 (a) Each [AS A PART OF THE ANNUAL STATEMENT REQUIRED
8 UNDER AS 21.84.340, EACH] society shall, before the second day of March, file
9 with the director a valuation of its certificates in force on the preceding December 31,
10 provided, the director may, for cause shown, extend the time for filing the valuation
11 for not more than two calendar months. The report of valuation must include an
12 opinion of a qualified actuary as to whether the reserves and related actuarial items
13 held in support of the certificates in force are computed appropriately, are based on
14 assumptions that satisfy contractual provisions, are consistent with prior reported
15 amounts, and comply with applicable laws of this state. The report of valuation shall
16 show, as reserve liabilities, the difference between the present mid-year value of the
17 promised benefits provided in the certificates of the society in force and the present
18 mid-year value of the future net premiums as the same are in practice actually
19 collected, not including any value for the right to make extra assessments and not
20 including any amount by which the present mid-year value of future net premiums
21 exceeds the present mid-year value of promised benefits on individual certificates. At
22 the option of a society, in lieu of the above, the valuation may show the net tabular
23 value. The net tabular value on certificates issued before July 1, 1967, shall be
24 determined under the law applicable before July 1, 1966, and on certificates issued on
25 or after July 1, 1967, may not be less than the reserves determined according to the
26 Commissioner's Reserve Valuation Method as defined in this section. If the premium
27 charged is less than the tabular net premium according to the basis of valuation used,
28 an additional reserve equal to the present value of the deficiency in the premiums shall
29 be set up and maintained as a liability. The reserve liabilities shall be properly
30 adjusted if the mid-year or tabular values are not appropriate.

31 * Sec. 8. AS 24.45.031(b) is amended to read:

1 (b) The commission may

2 (1) hold hearings and conduct investigations into compliance with the
3 provisions of this chapter;

4 (2) in conjunction with (1) of this subsection, issue subpoenas, compel
5 the attendance and testimony of witnesses, administer oaths and affirmations, and
6 require the production of books, papers, records, documents, or other items material
7 to the commission's duties or powers under this chapter;

8 (3) prepare, publish, and make available to the public, periodic, but at
9 least biennially [QUARTERLY AND ANNUALLY], summaries of the statements and
10 reports received; these summaries shall list separately individual lobbyists and
11 employers of lobbyists.

12 * Sec. 9. AS 35.10.015(b) is amended to read:

13 (b) The department shall develop and maintain an inventory of all public
14 buildings and facilities with respect to their compliance with the regulations adopted
15 under (a) of this section. [THE DEPARTMENT SHALL MAKE AN ANNUAL
16 REPORT TO THE GOVERNOR DESCRIBING WORK PERFORMED IN THE
17 PRECEDING CALENDAR YEAR TO UPGRADE PUBLIC BUILDINGS AND
18 FACILITIES TO CONFORM WITH THE REGULATIONS.] In addition, the
19 department shall develop cost estimates and recommended priorities for the upgrading
20 of public buildings and facilities that do not conform with the regulations adopted
21 under (a) of this section [AND SHALL INCLUDE THESE ESTIMATES AND THE
22 RECOMMENDED PRIORITIES IN THE ANNUAL REPORT TO THE GOVERNOR.
23 THE DEPARTMENT SHALL NOTIFY THE LEGISLATURE THAT THE REPORT
24 IS AVAILABLE].

25 * Sec. 10. AS 37.25.010(d) is amended to read:

26 (d) The University of Alaska shall, in the report required under
27 AS 14.40.190, report the amount of university receipts received in one year and
28 expended in the succeeding fiscal year [TO THE DEPARTMENT OF
29 ADMINISTRATION AND THE LEGISLATIVE BUDGET AND AUDIT
30 COMMITTEE BY SEPTEMBER 30 OF THE SUCCEEDING FISCAL YEAR].

31 * Sec. 11. AS 39.25.195(h) is amended to read:

1 (h) [THE DIRECTOR SHALL PREPARE A REPORT ON
2 NONPERMANENT AND EMERGENCY HIRE PRACTICES IN STATE
3 GOVERNMENT AND NOTIFY THE LEGISLATURE WITHIN THE FIRST 10
4 DAYS OF EACH REGULAR LEGISLATIVE SESSION THAT THE REPORT IS
5 AVAILABLE.] A hiring department or agency shall certify to the director within 15
6 working days following the appointment its reasons for appointing an emergency
7 employee. [THE REPORT SHALL INCLUDE INFORMATION ON THE NUMBER
8 OF NONPERMANENT EMPLOYEES AUTHORIZED UNDER THIS SECTION
9 AND THE NUMBER OF EMERGENCY EMPLOYEES HIRED IN EACH
10 DEPARTMENT, A DESCRIPTION OF THE PROCEDURES USED IN
11 AUTHORIZING THE HIRING OF NONPERMANENT EMPLOYEES, AND ANY
12 RECOMMENDATIONS FOR LEGISLATION REQUIRED TO IMPLEMENT THE
13 INTENT OF THIS SECTION.]

14 * Sec. 12. AS 43.76.025(c) is amended to read:

15 (c) The salmon enhancement tax collected under AS 43.76.010 - 43.76.028
16 [AS 43.76.010 - 43.76.030] shall be deposited in the general fund. The legislature may
17 make appropriations based on this revenue to the Department of Commerce and
18 Economic Development for the purpose of providing financing for qualified regional
19 associations. The legislature may base an appropriation for a qualified regional
20 association operating within a region designated under AS 16.10.375 on the value of
21 the fisheries resources caught in that region rather than the value of the fisheries
22 resources sold in that region if those values differ.

23 * Sec. 13. AS 44.47.092 is amended to read:

24 **Sec. 44.47.092. Land use planning and state facility procurement plan.**

25 The department shall make recommendations to the Department of Transportation and
26 Public Facilities and to appropriate program agencies concerning the effect upon the
27 comprehensive plan or other land use plans or proposals of municipalities and
28 unincorporated communities with respect to the facility procurement plan required to
29 be prepared in accordance with AS 35.10.170 [AND AS 44.42.055].

30 * Sec. 14. AS 44.47.150(d) is amended to read:

31 (d) Separate accounts shall be maintained in the name of each village for the

1 land, including the revenues from the land, acquired from each village corporation
2 under this section [, AND EVERY TWO YEARS WITHIN 90 DAYS OF THE
3 CLOSE OF THE SECOND STATE FISCAL YEAR A STATEMENT OF THE
4 ACCOUNT FOR EACH MUNICIPALITY SHALL BE PREPARED BY THE
5 COMMISSIONER AND BE MADE AVAILABLE TO THE VILLAGE AND TO THE
6 PUBLIC UPON REQUEST].

7 * Sec. 15. AS 46.03.032(k) is amended to read:

8 (k) The department shall prepare reports required by the federal government
9 in conjunction with federal capitalization grant award conditions. The department shall
10 also prepare reports and notices, including notices of default, required by the state
11 bond committee in conjunction with bonds issued under AS 37.15.560 - 37.15.605.
12 [THE DEPARTMENT SHALL ALSO PREPARE A BIENNIAL REPORT ON THE
13 ALASKA CLEAN WATER FUND AND NOTIFY THE LEGISLATURE THAT IT
14 IS AVAILABLE ON OR BEFORE THE FIRST DAY OF EACH FIRST REGULAR
15 SESSION OF THE LEGISLATURE.]

16 * Sec. 16. AS 46.08.050(b) is amended to read:

17 (b) A department that is appropriated or allocated money from the fund, either
18 directly or through a reimbursable service agreement with the Department of
19 Environmental Conservation, shall develop procedures governing the expenditure of,
20 and accounting for, money it expends from the fund. [THE DEPARTMENT OF
21 ENVIRONMENTAL CONSERVATION MAY NOT REIMBURSE OR PAY MONEY
22 TO ANOTHER STATE AGENCY FOR THE AGENCY'S ACTIVITIES UNDER
23 AS 46.08.040 UNLESS THE STATE AGENCY PROVIDES TO THE DEPARTMENT
24 THE INFORMATION NECESSARY TO COMPLETE THE REPORT REQUIRED
25 BY AS 46.08.060.]

26 * Sec. 17. AS 46.08.060(a) is amended to read:

27 (a) The commissioner shall make available a report to the legislature not later
28 than the 10th day following the convening of each first regular session of the
29 legislature. The commissioner shall notify the legislature that the report is available.
30 The report may include information considered significant by the commissioner but
31 must include [:]

1 (1) the amount of money expended by the department under
2 AS 46.08.040(a) during the preceding two fiscal years [YEAR];

3 (2) the amount and source of money received and money recovered by
4 or on behalf of the department during the preceding two fiscal years [YEAR] under

5 (A) AS 46.08.020; and

6 (B) AS 46.08.025;

7 (3) a summary of municipal participation in the department's responses
8 that were paid for by the fund;

9 (4) a detailed summary of department activities in responses paid for
10 by the fund during the preceding two fiscal years [YEAR], including response
11 descriptions and statements outlining the nature of the threat; in this paragraph,
12 "detailed" includes information describing each personal services position and total
13 compensation for that position, each contract in excess of \$10,000, and each purchase
14 in excess of \$10,000; and

15 (5) the projected cost to the department for the next two fiscal years
16 [YEAR] of monitoring, operating, and maintaining sites where response has been
17 completed or is expected to be continued during the next two fiscal years [YEAR].

18 * Sec. 18. AS 46.08.060(c) is amended to read:

19 (c) In addition to the department's report required under (a) of this section, the
20 governor shall submit a report about use of the fund during the previous two fiscal
21 years [YEAR] to the legislature not later than the 10th day following the convening
22 of each first regular session of the legislature. In the report, the governor shall describe
23 in detail the governor's use of money from the fund, with separate explanations, by
24 agency, of the activities that were paid for under the authority of AS 46.08.045.

25 * Sec. 19. AS 47.14.210 is amended to read:

26 **Sec. 47.14.210. Duties of the state panel.** The state panel shall

27 (1) by regulation adopt policies and procedures to carry out its duties
28 and to govern the performance of the duties of the local panels established under
29 AS 47.14.220;

30 (2) ensure that local panel members receive the minimum level of
31 training necessary to effectively carry out their duties;

1 (3) coordinate and review the activities of the local panels and make
2 recommendations to the governor on appointments to the local panels;

3 (4) prepare a biennial report [ANNUALLY], by the 10th day of each
4 first regular session of the legislature, concerning the activities of the state and local
5 panels during the previous two fiscal years [YEAR]; the report must include the
6 number of cases reviewed by each local panel, a description of the characteristics of
7 the children whose cases were reviewed by the panels, the number of children reunited
8 with their families, the number of children placed in other permanent homes, and
9 recommendations and justifications for program improvement, including
10 recommendations relating to state agencies and to the panel review system; the report
11 may contain other information on the experience of the local panels; the state panel
12 shall notify the legislature that the report is available.

13 * Sec. 20. AS 08.04.070(g); AS 08.24.071, 08.24.220; AS 08.36.070(a)(3);
14 AS 08.48.071(c), 08.48.101(b); AS 08.63.050(8); AS 08.64.101(3); AS 08.65.030(a)(6);
15 AS 08.68.100(a)(7); AS 08.84.010(b)(6); AS 08.86.070(7); AS 08.95.030(2);
16 AS 08.98.050(a)(7); AS 14.07.181; AS 14.40.170(a)(9), 14.40.296(b), 14.40.455(e);
17 AS 14.56.182, 14.56.183, 14.56.184, 14.56.185, 14.56.190; AS 16.51.100(5); AS 18.20.150(b);
18 AS 18.85.160(b); AS 21.39.175; AS 21.84.340(b); AS 36.30.540(2), 36.30.540(3),
19 36.30.540(6); AS 37.05.030; AS 42.45.020(e)(3); AS 43.76.030; and AS 44.42.055 are
20 repealed.

DOT/PF		44.42.055	DOT/PF prepare and biennially revise a statewide comprehensive facility procurement plan for public facilities of the state and its municipalities. Submit findings, plans and recommendations to the governor and appropriate state agencies to aid in developing capital budget requests.	Governor / State Agencies	Not stated	Not reported.	Not funded. Report not necessary.
University of Alaska		14.40.170	Report of expenditures of funds derived from sale, lease, exchange or transfer of land. (a)(9) report ... on the expenditures made during the preceding fiscal year from the funds of the University of Alaska that are derived from sales, leases, exchanges, or transfers of the land of the university or of interests in land of the university that were conveyed to the University of Alaska in settlement of the claim of the University of Alaska to land granted to the state in accordance with the Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance with the Act of January 21, 1929 (45 Stat. 1091), as amended.	Legislature	Within 1st 10 days of regular session of the Legislature	Necessary, biennial acceptable.	Not necessary because the proceeds from the sale of trust lands are unavailable for expenditure under AS 14.40.400. If required, should be annual.
University of Alaska		14.40.296	There is a Working Capital Reserve Fund established in the treasury of the University of Alaska. Quarterly reports on the activity of the fund are to be submitted to the LB&A Committee.	LB & A	Quarterly	Not reported.	Report not necessary because the working capital funds cannot be expended without specific appropriation.
University of Alaska	DOA/Risk Management	14.40.455	There is established in the general fund the University Risk Management Fund. DOA shall report annually on the activity of the fund and on the loss assumption levels.	OMB / LB & A	Not stated	Not reported.	Report not necessary because the risk management collateral fund has not been funded since inception. Other legislation was introduced this year to delete AS 14.40.455 in its entirety.

Recommended Change of Report Due Dates							
Dept.	Division	Statutory Reference	Report Requirement	To Whom	By	Prior Recommendation	Current Recommendation
DOA	APOC	24.45.031	Annual lobbying report. (b) (3) prepare, publish, and make available to the public, periodic, but at least quarterly and annually, summaries of the statements and reports received; these summaries shall list separately individual lobbyists and employers of lobbyists.	Make available to the public	Quarterly and annually	Report necessary, but should be required biennially.	Report biennially rather than annually
DOA	Foster Care Review	47.14.210	Annual report of state and local panels. Panel shall report to the state panel information needed by the state panel to prepare the report required	Legislature	By 10th day of each regular Legislative session	Report necessary, but should be required biennially.	Report biennially.
DEC		46.08.060	Oil and hazardous substance release response fund activity report.	Make available to the Legislature	By 10th day of each regular Legislative session	Necessary, biennial acceptable.	Report could be biennial rather than annual.

University of Alaska		14.40.190	Board of Regents prepare a written report on the condition of University property, of all receipts and expenditures, including the administration and disposition of appropriated and restricted funds, and of the educational and other work performed during the preceding two fiscal years.	Notify the Legislature the report is available	Beginning of each first regular session	Necessary, biennial acceptable.	Report is not unreasonable; however, it should be provided on an annual rather than a biennial basis.
University of Alaska		37.25.010	The University of Alaska must shall report the amount of University receipts received in one year and expended in the succeeding fiscal year.	DOA / LB&A	By September 30	Not reported.	Annual report is not unreasonable; however, the information is not available by the 9/30 due date. Recommend that this report be included in the report submitted in accordance with AS 14.40.190.

REPRESENTATIVE
TERRY MARTIN
VICE-CHAIRMAN
BUDGET & AUDIT COMMITTEE
MEMBER
HOUSE FINANCE COMMITTEE

Alaska State Legislature



MAY 15 - JAN 15 258-8169
716 W. 4TH, SUITE 650
ANCHORAGE, AK 99504
JAN 15 - MAY 15 465-3783
STATE CAPITOL
JUNEAU, AK 99801-1182

MEMORANDUM

J. James
TO: Rep. Jeannette James, Chair
State Affairs Committee

T. Martin
FROM: Rep. Terry Martin

DATE: May 2, 1997

RE: Scheduling of HB 265

Thank you for scheduling House Bill 265.



HB

269

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: May 1, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 5/3/97

The STATE AFFAIRS Committee considered:

HB 269

HOUSE BILL NO. 269

CONCEALED HANDGUN PERMITS

"An Act relating to permits to carry concealed handguns; and relating to the possession of firearms."

recommends it be replaced with the following committee substitute _____ the same title
 a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Jeannette James</i>	✓			
<i>Mark ...</i>	✓			
<i>Paul ...</i>	✓			
<i>...</i>	✓			

CHAIR'S SIGNATURE *Jeannette James*

Alaska State Legislature

House of Representatives

E-Mail: Representative Al_Vezey@LEGIS.state.ak.us

Interim Address:

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Juneau, AK 99801-1182

Representative Al Vezey

HB 269

Revisions to Alaska's Concealed Handgun Permit Law: Smaller, smarter government: less bureaucracy and more clarity for citizens

The intent of HB269(SB141) is simple:

There is no reason the permitted few should be more restricted than the unregulated many. Treat people and their handguns equally. All Alaskans, who are not otherwise prohibited by federal or state law from owning or possessing handguns, can carry handguns openly in certain places and can carry concealed without a permit in certain places. An Alaskan should be able to carry a concealed handgun in those same places, we should do no more than require fingerprinting, training, and background checks.

With the exception of the recognition of out-of-state permits and the lowering of the permit fee, the **Alaska Peace Officers Association supports HB269(SB141).**

The **Police Chiefs of the North Slope Borough, Valdez and Wasilla** have either spoken out or testified in favor of HB269(SB141).

HB269(SB141) is endorsed by the Alaska Outdoor Council and the National Rifle Association.

The Department of Public Safety supports most of the bill and opposes certain sections. The Department contends that without an increase in volume, reducing fees could result in not collecting enough funds to cover costs of the program. The Department also remains opposed to recognizing out-of-state permits and is cautious about changing the law at all.

OBSERVATIONS

There have been over 6,300 permits issued in Alaska for carrying concealed handguns since that right was recognized in state law in 1994. The Department of Public Safety has done a remarkable job of ensuring fair and speedy processing of applications.

However, Alaskans have voiced some complaints on overly restrictive and confusing prohibitions and regulations leading to a burdensome waste of time. Many of these stipulations were included in the original legislation due to courteous consideration of the dire predictions of mayhem in the streets from some members of the legal community and law enforcement. None of those dire predictions has proven accurate during years of experience and it is appropriate to restore equal rights for law-abiding citizens.

For the most part, the law is working. Crime is down. According to the information we have from the Department of Public Safety, of 6,300 permittees, not one person has used their concealed handgun to commit a crime.

Similar legislation (SB177) passed last session by large majorities, but was vetoed by the Governor. Even though legislation last year prohibited anyone from drinking and carrying a concealed handgun, some felt that whether one was drinking or not, no concealed handguns should be allowed in bars. In the spirit of compromise, we have drafted HB269(SB141) to allow concealed handguns in restaurants regulated under AS 04.16.049 and not in bars.

This bill does not change other state law restricting carrying weapons in bars or schools. All the other existing laws restricting handguns in bars and schools remain in force.

If HB269(SB141) is passed, the simple effect would be that anywhere you can carry a handgun openly (which you can do without training, without background checks, without fingerprinting, and without a permit) you will be able to carry a permitted concealed handgun.

If 300,000 adult Alaskans can legally carry a handgun openly, there is no reason to have greater restrictions for the 6,300 Alaskans who have been fingerprinted, checked, trained and permitted.

The existing law is too restrictive, too confusing and too expensive. For example, under current law you are prohibited from walking into a financial institution with a permitted concealed handgun, but you are allowed to take the handgun out and carry it openly into the bank. Existing law too often turns common sense on its head.

SECTIONAL ANALYSIS

Section 1 and 2 amend Alaska criminal statutes to make clear that no felon, even a non-violent felon, would ever be able to apply for a concealed carry permit.

Sections 3, 5 and 15 of the bill make several things much cleaner and easier to enforce. If a person is a concealed handgun permit holder from another state and comes to Alaska to visit, we will recognize that permit. However, that person is responsible for following the laws regulating Alaskan permit holders. Section 15 should be amended to recognize a visitor's out-of-state permit for 120 days in Alaska, but no longer. This also allows a new Alaskan resident an opportunity to make the transition from one state to Alaska and comply with the 90 day waiting period mandated by our permit law and the 30 day application period with the Department of Public Safety.

These amendments simply recognize equality of Americans as requested by SJR14, which supports legislation in the U.S. Congress seeking nationwide recognition of concealed carry permits issued by any government agency or subdivision.

Sections 3 and 5 improve definitions and continues to permit a municipality or village to prohibit possession of concealed handguns.

Section 5 leaves existing law in place making bars off limits to concealed handguns, but does allow access to restaurants identified under AS 04.16.049. If the Alcohol Beverage Control Board finds that a business, or a specific area of a business, is not a bar you will be allowed to carry concealed, but you will not be allowed to drink any alcohol.

Sections 7 and 11 ensure that the applicant for a permit receives a copy of the state law and regulations and certifies the applicant read them. The bill also requires the Department of Public Safety to compile a concise summary of where, when and by whom a handgun can be carried under state and federal law. The Department is already working to compile this summary.

Section 8 requires the Department to process the permit if the permittee is otherwise eligible without having to wait for weeks or months for the F.B.I. to complete fingerprinting checks. The Department is given authority to immediately revoke a conditional permit whenever it receives information from checking fingerprinting that makes the permittee ineligible. This conforms statute to what the Department of Public Safety already does in practice.

Section 10 simplifies the standards for qualifications to apply for a permit.

Under existing law, in order to carry openly you must be 21 years of age or older and be allowed by state or federal law to own or possess a handgun. Those under 21 can carry with their parent's permission.

Under existing state law, in order to carry concealed during outdoor activities, in your dwelling, in your business, where you are employed or on land owned or leased by the person (see AS 11.61.220) you must be 16, and you must be allowed by state and federal law to own or possess a firearm.

Under existing law, in order to carry concealed in other places than those mentioned above, you must acquire a permit. If HB269(SB141) is passed, in order to do that you must be 21, you must be allowed by state and federal law to own or possess a firearm, you must be a 90 day resident of the state immediately preceding your application for a concealed handgun permit, you must receive training and education and you must demonstrate competence with a handgun.

Federal and state law already address who may own or possess a handgun. In addition, HB269(SB141) prohibits anyone convicted of two Class A misdemeanors in the last six years from applying for or retaining a concealed carry permit. The Department of Public Safety strongly supports this provision in HB269(SB141).

Section 12 simply reduces the fees from \$125 to \$99 for initial application and from \$60 to \$30 for renewal or replacement to better reflect the true cost. Other States have even lower fees or no fees at all. This should still leave the Department with at least \$40 for processing each permit above the costs for F.B.I. and background checks.

Section 13 amends language to clearly give the Department the authority to immediately suspend permits for anyone who is ineligible under state or federal law to own or possess a handgun.

Section 14 amends language to increase from 5 to 6 years the time frame for disallowing repeat offenders. This provision is tougher than existing law.

Section 16 repeals a long list of special prohibitions that don't apply to open carry or, in some cases, to concealed carry unpermitted. Instead, there is a flat prohibition for possession of a concealed handgun wherever federal or state law prohibits possession of a handgun. With a single exception for certain restaurants, existing law controlling the open carry of handguns while still apply to permitted concealed carry.

A restrictive laundry list of prohibitions tailored only for the fingerprinted, trained, permitted carriers make little sense when state law allows you to carry openly in those places. Federal

and state law already address where handguns can be possessed. In addition, any private business has the right to post signs prohibiting carrying handguns whether concealed or open (See Senate Finance testimony by Dean Guanelli, Department of Law and March 24 and April 29 memos from Legislative Legal counsel). State or public offices may also post signs. The penalty for violating these provisions is criminal trespass.

Section 17 simplifies definitions so that shotguns, rifles and all weapons prohibited under AS 11.61.200 do not qualify for concealed carry. Otherwise, just as in every other state, any handgun not otherwise prohibited by state or federal law is treated equally. There are no examples, apparently, anywhere in the United States, where a permittee has used a derringer or "miniature" handgun in a crime. (See Tennessee Law Review, page 707)

Section 18 repeals renewal training requirements; sections no longer justified under the principle "where you can carry open, you can carry concealed." AS 18.65.715(b), 18.65.725(a)(3), and 18.65.755(b).

Sections 4, 6 and 9 are included to make special provisions for certain peace officers and carrying concealed. While there are objections to making special provisions for certain individuals, it is not unreasonable to amend the bill to provide special exemptions for peace officers. This especially seems reasonable in light of the increasing support from peace officers and their organizations for the concept of concealed carry by law-abiding citizens.

We urge the adoption of HB269(SB141) to continue the excellent record set this year by the Legislature toward reducing government regulation and taking practical steps to make Alaska's government smaller and smarter.

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL
OFFICE
P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428
FAX: (907) 465-4043

DEPARTMENT OF LAW

CRIMINAL DIVISION

May 2, 1997

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2064
PHONE: (907) 269-6250
FAX: (907) 269-6270

The Honorable Jeannette James
Alaska State House of Representatives
State Capitol, Room 102
Juneau, Alaska 99801

Re: Senate Bill 141 and House Bill 269

Dear Rep. James:

The current concealed handgun permit program was a carefully-crafted statute that established a number of important protections. As a result of the careful way in which the statute was written, there have been few, if any, problems with enforcement of the law. It has been less than three years since the law went into effect, and it is too soon to consider many of the sweeping changes envisioned by SB 141 and HB 269¹.

My objections to the bills fall into two primary areas: first, the bills greatly expand *where* concealed handgun can be carried, and second, the bills greatly expand *who* can carry one. I will first discuss *where* a concealed handgun can be carried or, rather, where it cannot be carried.

This will amplify and clarify a point mentioned in my testimony during the Senate State Affairs Committee and Senate Finance Committee hearings on SB 141. The Senate Rules version of SB 141, and HB 269, would sweep away all the specific protections in AS 18.65 that prevent concealed handguns from being carried in certain sensitive locations, such as domestic violence shelters, banks, government

¹ HB 269 is very similar, but not identical, to CS SB 141 (RLS).

offices, police departments, etc., and would rely instead on existing criminal trespass laws.

During the committee hearings in the Senate, it was asserted by Senator Lyda Green's aide that, even if all these specific statutory protections are swept away, building managers will be able to accomplish the same result as current statutes by posting signs saying "No Concealed Handguns Allowed". According to the testimony, persons carrying concealed handguns could then be arrested for "criminal trespass". AS 11.46.320 -- 350.

During my testimony in both Senate State Affairs and Senate Finance, I acknowledged that the criminal trespass statutes were available, but I also pointed out that different rules applied to buildings that are open to the public than applied to buildings that are *not* open to the public. This point is discussed at length in an Attorney General's Opinion, dated July 12, 1995, a copy of which I provided to Senator Green's staff.

While it true that premises which are *not* open to the public, such as domestic violence shelters, can post signs to prevent concealed handguns from being carried, this is *not* true in buildings that are open to the public, such as the legislature, government offices, and police departments. In premises that are *open* to the public, a posted sign will *not* suffice to prevent concealed handguns from being carried. In those places, under the Senate bill it would be legal to carry concealed handguns onto the premises, and it will only be illegal to *fail to leave* "after being lawfully directed to do so personally by the person in charge." AS 11.46.350(a)(2).

Therefore, as a practical and legal matter, public buildings will have no way to prevent concealed handguns from being brought onto the premises, unless they establish airport-like security checkpoints to screen for weapons. Alternatively, the building could be remodeled so that the public is corralled into a limited "public area" and the remainder of the premises designated as not open to the public. In that case, signs prohibiting concealed handguns could be posted at the entrances to the non-public areas. While this type of remodeling may be practical in a few buildings, the design and function of most other buildings that are open to the public will likely make such remodeling highly impractical in a large number of instances. Even in

those cases in which remodeling is practical because of the specific layout of the building or office, it is likely to be quite expensive. I do not believe any of the fiscal notes previously submitted have considered remodeling costs.

Even in non-public buildings, the Senate version of this bill creates a burden on each building manager to install and maintain signs at every entrance to a building. This will create a crazy-quilt patchwork of private regulation. Currently permit-holders know precisely where they are allowed to carry concealed handguns and where they are not. Under the bill, confusion and inconsistency will be the norm. For example, permit-holders will not know in advance if they can carry a concealed handgun to a particular private building unless they have been to the building previously. Even then, buildings that are not posted off-limits one day may be posted off-limits the next. Moreover, it is likely there will be disagreements over whether particular premises are "not open to the public" (in which case signs are effective), or whether the premises are "open to the public" (in which case signs have no legal effect).

Overall, one wonders whether the Senate version achieves the stated goal of the bill's supporters of creating more uniformity and less confusion for permit-holders. Frankly, I think permit-holders, and building and office managers alike, will find present statutes much preferable.

Citizens have a right to bear arms, but other citizens (the 99% of Alaskans who do *not* have a concealed handgun permit) have a right to feel comfortable and to demand reasonable protection from guns carried secretly in sensitive locations.

It is up to the legislature to strike a balance between people who choose to carry firearms concealed and people who not only choose *not* to carry firearms concealed, but would prefer not to be around people who do. Three years ago, the legislature carefully considered these issues and struck this balance by allowing concealed firearms to be carried everywhere in the state except for a few specific places. By sweeping away all these protections, we would be elevating the desires of permit-holders above the rights of 99% of all other Alaskans.

Next, I will turn to the question of *who* ought to be allowed to obtain a permit to carry a concealed handgun.

Present law prevents certain persons from obtaining permits. Many of the limitations in current law simply repeat provisions in federal law, but some of the state law provisions provide additional guidance not found in the federal statutes. For example, these bills would propose to allow a person to obtain a permit, even if the person had been recently ordered by a court to go to treatment for alcohol or drug abuse, or if the person was currently in such treatment. Present law does not allow such a person to obtain a permit if the treatment occurred within the previous three years.

While it is true that federal law prohibits a person from carrying a handgun if they are an unlawful user of, or addicted to, a controlled substance, the federal law provides no clear guidelines to determine who is included and who is excluded, and does not limit possession by serious alcoholics. In contrast, current state law provides the clear guidance needed. Other provisions in AS 18.65.705 also give clearer guidelines than federal law and should remain a part of state law.

In addition, SB 141 allows unqualified people, with no knowledge of our laws, and no ties to Alaska, to carry concealed handguns here if they are allowed to carry concealed handguns in their home states. The handgun laws in other states, however, allow many people to qualify who would not qualify under Alaska law. Thus the "reciprocity" provision allows non-residents to carry concealed handguns here, even if they would not qualify to do so if they were a resident of Alaska. Such a law would allow *non-residents* to do things that similarly situated residents could *not* do.

Currently tourists can carry concealed handguns -- without a permit -- if they are hunting, fishing or hiking, where a firearm is needed for protection. These bills would allow people from other states to carry concealed handguns everywhere else they are likely to visit, such as tourist shops, hotels, bed and breakfast homes, and museums. This is not necessary to promote tourism.

The "reciprocity" provision also puts non-residents carriers of concealed handguns at great risk of violating our laws. The bill treats non-resident permit-holders as though they are permit-holders in Alaska. Non-residents would thus be held to the same legal standards as Alaska permit-holders. For example, if contacted by a peace officer, the non-resident would be required to notify the officer that he or she was carrying a concealed handgun. Failure to do so is a class A misdemeanor offense. Although ignorance of the law is never an excuse, as a practical matter most non-residents would be completely unaware of their obligation to so inform an officer. Similarly, non-residents would generally not be aware of which municipalities have enacted local options to ban concealed handguns. Thus the non-resident might violate municipal as well as state law.

In conclusion, I recommend

(1) that the current statutes in AS 18.65.755 not be repealed. I do, however, believe that the provision at page 7, lines 19-21 of CS SB 141 (RLS), relating to carrying concealed handguns into residences, is preferable to current AS 18.65.755(a)(9). HB 269 does not contain this provision, but it should.

(2) that the current statutes in AS 18.65.705 not be repealed.

(3) that the reciprocity provision be eliminated.

I would be happy to work with your committee on needed changes to either of these bills.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Dean J. Guaneli

Chief Assistant Attorney General

cc: State Affairs Committee members

AMENDMENT

4
corrected
By S. Green
& Halford

OFFERED IN THE SENATE

TO: CSSB 141(RLS)

1 Page 7, lines ~~13~~²³⁻²⁴ 14:

2 Delete "or who may lawfully carry a concealed handgun in public in the state where
3 the person resides"

4 Insert "with permit requirements at least as strict as those in AS 18.65.700 -
5 18.65.790"

WHAT DOES LAW ENFORCEMENT HAVE TO FEAR?

Law enforcement officers have enough to fear every day from violent repeat offenders, a revolving-door justice system, and working conditions that carry the threat of the ultimate sacrifice in the line of duty.

That's why law enforcement officers all over the country are lining up in support of Right-to-Carry. The simple truth is that honest citizens deserve an honest chance against crime. Legislative proposals known as Right-to-Carry codify the citizens' right to self-protection, and create a partnership of trust between law enforcement and law-abiding citizens.

After a close examination of the facts, thirty-one states have placed trust in their honest citizens to take responsibility for their own safety. Now we need to do it for the good citizens in the other nineteen states.

Right-to-Carry Reduces Crime

The verdict is in. A recent landmark study of FBI crime statistics from all the counties in America from 1977 to 1992, undertaken by the University of Chicago, has proven that Right-to-Carry laws reduce violent crime.

The study documented overwhelming evidence that if states without Right-to-Carry had permitted it, their citizens would have been spared approximately 1,570 murders, 4,177 rapes, 12,000 robberies and 60,000 aggravated assaults every year. The study's author, Professor John Lott, Ph.D., conclusively proved what law enforcement has known all along — that "criminals respond rationally to deterrence threats."

Not a Risk for Law Enforcement

Right-to-Carry doesn't jeopardize law enforcement or public safety for the simple reason that law-abiding citizens aren't the problem. But don't take our word for it:

"When we were first talking about it, most of law enforcement was anti-concealed weapons. Now we're for it. It puts guns in the hands of the good guys instead of the bad guys."

— *Commander Steve Jones, Orange County Sheriff's Dept., Florida*
(Where Right-to-Carry passed in 1987)

"It has impressed me how remarkably responsible the permit holders have been."

— *Col. James Wilson, director of Texas Department of Public Safety*
(Where Right-to-Carry passed in 1995)

The facts speak for themselves. Right-to-Carry is a responsible policy that saves lives and helps law enforcement protect the public — the same reasons the Law Enforcement Alliance of America has drafted and fought for the Community Protection Initiative, federal legislation to allow qualified retired and off-duty law enforcement officers to carry concealed firearms nationwide. It just makes sense.

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For more information or to inquire about membership, contact:

The Law Enforcement Alliance of America
7700 Leesburg Pike, Suite 421, Dept. FF
Falls Church, Virginia 22043

Or call toll-free 1-800-766-8578

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1

ALASKA STATE LEGISLATURE

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State Capitol
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SENATOR LYDA GREEN SENATE DISTRICT N

SB 141

Revisions to Alaska's Concealed Handgun Permit Law:

Smaller, smarter government: less bureaucracy and more clarity for citizens

The intent of SB141 is simple:

There is NO reason the permitted few should be more restricted than the unregulated many. Treat people and their handguns equally. All Alaskans, who are not otherwise prohibited by federal or state law from owning or possessing handguns, can carry handguns openly in certain places and can carry concealed without a permit in certain places. If an Alaskan wants to carry a concealed handgun in more places, we should do no more than require fingerprinting, training, and background checks.

With the exception of the recognition of out-of-state permits and the lowering of the permit fee, the Alaska Peace Officers Association supports SB141.

The Police Chiefs of Barrow, Valdez and Wasilla have testified in favor of, or spoken favorably, about SB141.

SB141 is endorsed by the Alaska Outdoor Council and the National Rifle Association.

The Department of Public Safety supports portions of the bill and opposes some portions. The Department is primarily opposed to recognition of out-of-state permits and is cautious about the effect of changing the standards for where you can carry and who can apply.

OBSERVATIONS

There have been almost 6,300 permits issued in Alaska for carrying concealed handguns since that right was recognized in state law in 1994. The Department of Public Safety has done a remarkable job of ensuring fair and speedy processing of applications.

However, Alaskans have voiced some complaints on overly restrictive and confusing prohibitions and regulations leading to a burdensome waste of time. Many of these stipulations were included in the original legislation due to courteous consideration of the dire predictions of mayhem in the streets from some members of the legal

community and law enforcement. None of those dire predictions has proven accurate during years of experience and it is appropriate to restore equal rights for law-abiding citizens.

For the most part, the law is working. Crime is down. According to the information we have from the Department of Public Safety, of 6,000 permittees, not one person has used their concealed handgun to commit a crime.

Similar legislation (SB177) passed last session by large majorities, but was vetoed by the Governor. Even though legislation last year prohibited anyone from drinking and carrying a concealed handgun, some felt that whether one was drinking or not, no concealed handguns should be allowed in bars. In the spirit of compromise, we have drafted SB141 to allow concealed handguns in restaurants regulated under AS 04.16.049 and not in bars. Further objection was voiced in Senate State Affairs by the Department of Public Safety regarding a permittee drinking in a restaurant. Although current law already makes it illegal to carry firearms while intoxicated, Senator Green supports amending SB141 to specifically prohibit permittees from drinking intoxicating beverages in restaurants (**amended Section 5**).

This bill does not change other existing state or federal law restricting carrying weapons in bars or schools. Other existing laws restricting handguns in bars and schools remain in force.

If SB141 is passed, the simple effect would be that anywhere you can carry a handgun openly (which you can do without training, without background checks, without fingerprinting, and without a permit) you will be able to carry a permitted concealed handgun.

If 300,000 adult Alaskans can legally carry a handgun openly, there is no reason to have greater restrictions for the 6,000 Alaskans who have been fingerprinted, checked, trained and permitted.

The existing law is too restrictive, too confusing and too expensive. For example, under current law you are prohibited from walking into a financial institution with a permitted concealed handgun, but you are allowed to take the handgun out and carry it openly into the bank. Existing law too often turns common sense on its head.

Sections 1 and 2 amend Alaska criminal statutes to make clear that no felon, even a non-violent felon, would ever be able to apply for a concealed carry permit.

Sections 3, 5 and 14 of the bill make several things much cleaner and easier to enforce. If a person is a concealed handgun permit holder from another state and comes to Alaska to visit, we will recognize that permit. However, that person is responsible for following the laws regulating Alaskan permit holders. In addition, **Section 12** requires that the visitor must, within 90 days, inform the Department of Public Safety of their presence so that, just as with Alaskan permit holders, the Department knows who is allowed to carry concealed handguns in Alaska.

These amendments simply recognize the equality of all Americans as requested by SJR14, which supports legislation in the U.S. Congress seeking nationwide recognition of concealed carry permits issued by any government agency or subdivision.

Sections 3 and 5 also improve definitions and still attempt to permit a municipality or village to prohibit possession of concealed handguns.

Section 5 leaves existing law intact and bars are off limits to concealed handguns, but SB141 does allow access to restaurants identified under AS 04.16.049. If the Alcohol Beverage Control Board finds that a business, or a specific area of a business, is not a bar, you will be allowed to carry concealed. The proposed committee substitute amends SB141 to also prohibit a permittee from consuming intoxicating liquor in the restaurant.

Sections 7 and 11 ensures that the applicant for a permit receives a copy of the state law and regulations and certifies the applicant read them. The bill also requires the Department of Public Safety to compile a concise summary of where, when and by whom a handgun can be carried under state and federal law. The Department is already working to compile this summary.

Section 8 requires the Department to process the permit within 30 days if the permittee is otherwise eligible without having to wait for weeks or months for the F.B.I. to complete fingerprinting checks. The Department is given authority to immediately revoke a conditional permit whenever it receives information from checking fingerprinting making the permittee ineligible. This conforms statute to what is actually being done already in practice.

Section 10 simplifies the standards for qualifications to apply for a permit.

Under existing law, in order to carry openly you must be 21 years of age or older and be allowed by state or federal law to own or possess a handgun.

Under existing state law, in order to carry concealed during recreation activities, in your dwelling, in your business, where you are employed or on land owned or leased by the person (see AS 11.61.220) you must be 16, and you must be allowed by state and federal law to own or possess a firearm.

Under existing law, in order to carry concealed in other places than those mentioned above, you must acquire a permit. If SB141 is passed, in order to do that you must be 21, you must be allowed by state and federal law to own or possess a firearm, you must be a 90 day resident of the state immediately preceding your application for a concealed handgun permit, you must receive training and education and you must demonstrate competence with a handgun.

A restrictive laundry list of prohibitions tailored only for the fingerprinted, trained, permitted carriers make little sense when state law allows almost any adult to carry openly, and, in many cases concealed, without a

permit. Federal and state law already address who may own or possess a handgun.

Section 12 reduces the fees from \$125 to \$99 for initial application and from \$60 to \$30 for renewal or replacement to better reflect the true cost. Almost every other state have even lower fees or no fees at all. This should still leave the Department with at least \$40 for processing each permit above the costs for F.B.I. and background checks.

Section 13 amends language to clearly give the Department the authority to immediately suspend permits for anyone who is ineligible under state or federal law to own or possess a handgun.

Section 15 repeals a long list of special prohibitions that don't apply to open carry or, in some cases, to concealed carry unpermitted. Instead, there is a flat prohibition for possession of a concealed handgun wherever federal or state law prohibits possession of a handgun.

A restrictive laundry list of prohibitions tailored only for the fingerprinted, trained, permitted carriers make little sense when state law allows you to carry openly in those places. Federal and state law already address where handguns can be possessed. In addition, any private business has the right to post signs prohibiting carrying handguns whether concealed or open. Violators would be subject to criminal trespass statutes (the penalty can be just as severe for criminal trespass as current law prohibiting permittees from carrying in certain places).

Section 16 simplifies definitions so that shotguns, rifles and all weapons prohibited under AS 11.61.200 do not qualify for concealed carry. Otherwise, just as in every other state, any handgun not otherwise prohibited by state or federal law is treated equally. The Senate State Affairs Committee has received testimony from women requesting they be allowed to apply and train for a permit to carry handguns designed for concealed carry. There are no examples, apparently, anywhere in the United States, where a permittee has used a derringer or "miniature" handgun in a crime.

Section 17 repeals renewal training requirements; sections no longer justified under the principle "if you can carry open, you can carry concealed." AS 18.65.715(b), 18.65.725(a)(3), 18.65.740(a)(2), 18.65.755(b), and 18.65.755(c).

Sections 4, 6 and 9 are included to make special provisions for certain peace officers and the carrying of concealed handguns. While there are objections to making special provisions for certain individuals, it is not unreasonable to amend the bill to provide special exemptions for peace officers. This especially seems reasonable in light of the increasing support from peace officers and their organizations for the concept of concealed carry by law-abiding citizens.

I urge the adoption of SB141 to continue to excellent record set this year by the State Senate toward reducing government regulation and taking practical steps to make Alaska's government smaller and smarter.

** Deleted by Sen. Donley's amendment.*

COMMITTEE
Amendment Number: 1 0-LS0706\X.1
Bill Number: _____ Luckhaupt
Sponsor: _____ Date: 4-18-97 4/18/97
Logged In By: JL

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR PHILLIPS

TO: CSSB 141() ("X" Version, Draft, Dated 4/17/97)

1 Page 7, lines 17 - 18:

2 Delete all material and insert:

3 "(a) A permittee may not possess a concealed handgun

4 (1) within a residence, other than the permittee's residence, unless the
5 permittee has first obtained the express permission of an adult residing there to bring
6 a concealed handgun within the residence; and

7 (2) anywhere a person is prohibited from possessing a handgun under
8 state or federal law."

9 Page 8, lines 6 - 7:

10 Delete "18.65.755(b), and 18.65.755(c)"

11 Insert "and 18.65.755(b)"

Adopted
4-3

AMENDMENT

OFFERED IN THE SENATE FINANCE COMMITTEE

TO: CSSB 141 (FIN) (Work Draft Version X)

BY ADAMS

SENATE FINANCE
COMMITTEE

Amendment Number: 3

Bill Number: SB141

Sponsor: _____ Date: 4-22

Logged In By: 17

Page 2, line 21:

Insert a new bill section to read:

"Sec. 3. AS 11.61.220(a) is amended to read:

*Rejected
2-5*

(a) A person commits the crime of misconduct involving weapons in the fifth degree if the person

- (1) knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person;
- (2) knowingly possesses a loaded firearm on the person in any place where intoxicating liquor is sold for consumption on the premises;
- (3) being an unemancipated minor under 16 years of age, possesses a firearm without the consent of a parent or guardian of the minor;
- (4) knowingly possessed a firearm within the grounds of or on the parking lot immediately adjacent to a center, other than a private residence, licensed under AS 47.33 or AS 47.35 or recognized by the federal government for the care of children;
[OR]
- (5) possesses or transports a switchblade or a gravity knife; or
- (6) knowingly possesses a firearm in
 - (A) a courthouse or a courtroom of this state unless the person is a judge or has been authorized to possess a firearm by a judge presiding at that courthouse or courtroom:

(B) a building housing only state offices, unless authorized in writing by the commissioner of administration for purposes of public safety:

(C) an office of the state that is not located in a building described in (B) of this subsection, unless authorized in writing by the commissioner of administration for purposes of public safety:

(D) a facility providing services to victims of domestic violence or sexual assault:

(E) a law enforcement or correctional facility:

(F) a vessel of the Alaska Marine Highway System except when stored unloaded in a locked vehicle or when being delivered to the purser: or

(G) a school bus.

Renumber following sections accordingly.

Page 3, line 16:

Delete "and (4)"

Insert "(4) and (6)"



ALASKA STATE LEGISLATURE

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Wasilla, Alaska 99654
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(907) 376-3157 Fax

Session:

State Capitol
Juneau, Alaska 99801-1132
(907) 465-6600
Fax (907) 465-3805

SENATOR LYDA GREEN SENATE DISTRICT N

MEMO

TO: Members, Senate Finance Committee

FROM: Senator Lyda Green

DATE: April 21, 1997

RE: Amendment proposed by Mr. Art Snowden on behalf of
the Alaska Court System

COPY

The amendment proposed by Mr. Snowden is not acceptable.

SB141 is legislation addressing permits for concealed carry. The legislation does not address the right of Alaskans to carry handguns openly. It is not my intent to sponsor legislation that addresses where someone can carry openly.

The Court System already has in place an administrative order based on the Constitutional authority granted to administer the court system that prohibits firearms for most Alaskans in a courthouse. If the court system has a real concern over the lack of specific statutory authority they have not brought the matter to the attention of the legislature until now. They can introduce their own legislation.

There is no immediate problem. I suggest that this issue be set aside for consideration during the interim and that we consider how all the laws inter-relate regarding where, when and by whom you can carry openly.

SB141 is not the appropriate vehicle to try to further regulate the open carry of firearms in Alaska. SB141 should be limited to clarifying statute dealing with permitted concealed carry.

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

April 17, 1997

RECEIVED
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AMS:U

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Anchorage

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Steve Kalwara, Member
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Scott Chalin, Member
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Leroy Mestas, Member
Ketchikan
Pres. First City Chapter

James Sec, Member
Craig
Pres. Prince of Wales Chapter

Senator Lyda Green
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Senator Green,

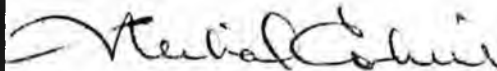
On behalf of the Alaska Peace Officers Association, I would like to thank you for introducing language in Senate Bill 141 waiving the permit process for Alaska certified and visiting out-of-state police officers on official business to carry concealed handguns, and the relaxation of the permit process for retired Alaska police officers.

At a recent meeting of the APOA State Board Legislative Subcommittee, we reviewed other language in SB 141 and do not oppose other sections of the bill except for:

- 1) Reciprocal acceptance of other out-of-state CCW permittees. We believe that Alaska has a thorough screening process for permittees which is not the case for a good portion of the other states.
- 2) We believe NO convicted felon should ever be allowed to apply for a CCW permit.
- 3) We believe the permit fees should remain the same.

We look forward to working with you further on this legislation. Please feel free to call me at 451-5316, or our business manager, Joseph Young at 277-0515.

Sincerely,



Michael Corkill
APOA State President

SB141

4-14-97

Honorable John Torgerson
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Sir,

I wish to express my support of Senate Bill 141 proposed by Senator Green. Before I proceed further let me briefly state that I have been an Alaskan police officer for nearly twenty years and I am currently Chief of Police for the Valdez Police Department. I have been a member of the Alaska Police officer's Association since my arrival in Alaska and am currently a member of the Alaska Association of Chiefs of Police. My contacts with "road" police officers indicate that there is overwhelming support for the right of good citizens to legally carry concealed handguns. The observation from the street officer is that troublemakers do not go through the necessary steps to carry legally.

There have been concerns raised regarding some of the changes this bill would provide. Many of these issues are already covered by other statutes or sections of the existing statute. The Misconduct Involving Weapons Statute already covers drinking and firearms. Allowing CCW holders to enter a licensed premise restaurant with their firearm does not allow them to become intoxicated. A person doing so would be in violation of Misconduct Involving Weapons In The Fourth Degree whether or not they had a permit.

Another section addresses honoring out of state permits. CCW permits are not casually issued in any state (Vermont excepted, more later). Virtually all states require background checks. We honor out of state driver's licenses without question and most CCW permits are much more difficult to obtain. The "Vermont Issue" has been mentioned regarding Vermont's allowance of any citizen in good standing to carry concealed. This is an interesting point but I would like to ask how many Vermont citizens have been arrested in the state of Alaska for Misconduct Involving Weapons within the last ten years? As the old saying goes, "we have come up with an ingenious solution to a non-existent problem."

The original statute did not allow carry at banks and financial institutions. I found this very interesting since that is one of the main reasons for issuance in other states. I have heard merchants express dismay that they cannot use their cow when delivering large cash business deposits to their bank. For many this is the main reason they went through the process.

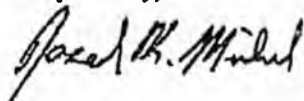
The legal carry of concealed weapons by good Alaskans is not a problem for Alaska Law Enforcement. The criminal element will carry and use weapons and not bother worrying about

the legality of their conduct.

As I previously stated, I have been a member of the major police organizations in the state. APOA and the Chiefs Association have opposed previous ccw bills. I would like to see these organizations poll their members prior to taking a stand on major issues. I have never been asked where I stand on this or any other issue going to the legislature by either organization. I have never talked to any other "road officer" who has been polled.

Thank you for your time and consideration.

Respectfully,



Chief Joseph K. Michaud
Valdez Police Department

Concealed weapon law gets police support

By MARK SABBATINI

THE JUNEAU EMPIRE

Weapons instructors and police officials gave their support today to a bill expanding where carriers of concealed handgun are allowed.

A controversial provision allowing some convicted felons to obtain permits has been removed.

Carriers of concealed handguns would be allowed into the same locations as those who carry weapons openly, including domestic violence shelters, banks and government buildings. Sen. Lyda Green, a Wasilla Republican sponsoring Senate Bill 141, said the state's 6,000 permit holders faced stricter requirements and no license has been revoked for misuse of a weapon.

About 15 people voiced support for the bill during a hearing by the Senate Finance Committee today.

"I think law abiding citizens checked out by the FBI should be allowed to carry concealed handguns into banks and have a handgun on school property to drop off their children," said Rod Christopher, a Kenai resident who has been a weapons instructor for 18 years. "No guns in the schools, of course."

Opponents have expressed concern about provisions allowing residents from other states to carry weapons for up to 90 days without notification and about where carriers would be allowed. Among the few opponents testifying against the bill today was Lauree Hugonin, executive director of the Alaska Network on Domestic Violence and Sexual Assault, who said eliminating certain restrictions leaves only

vague language where a weapon involved in a domestic violence situation is seized.

"That wouldn't necessarily be a handgun or apply to other weapons the person may have access to," she said.

The bill reduces application and renewal fees, requires a temporary permit to be issued if federal background information has not been supplied within 30 days, and allows carriers into restaurants if they do not drink alcohol. Municipalities can vote to prohib-

it possession of concealed weapons.

Allowing out-of-state visitors to carry weapons, even if they haven't met Alaska's standards for a permit, didn't concern Joe Michaud, chief of the Valdez Police Department.

"We recognize out-of-state driver's licenses without question," he said. "Perhaps we could extend the same trust with concealed weapons."

The House still needs to consider the bill if the Senate approves it.

JUNEAU EMPIRE, FRIDAY, APRIL 18, 1997 3

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Margaret Reinert of South Dakota has been named principal at Hunter Elementary School. She is division director of education services and resources for the Department of Education in South Dakota.

Her background includes six years as an adjunct professor at South Dakota State University and 11 years teaching with Todd County Schools in South Dakota.

Roxa Hawkins has been named principal at University Park Elementary School. She has been interim principal at University Park since the beginning of the school year and has been with the district for 19 years, serving as

at Ryan Middle School. He has been interim principal at Ryan since the beginning of the school year and previously served as the school's assistant principal for four years.

The Hunter vacancy brought the district much controversy.

The former interim principal at Hunter, Mary Moore, did not make the list of finalists for the job and accused the school district of racism in its decision. She is now on medical leave, citing high blood pressure.

Moore was the district's only black principal, serving a school with the highest minority student population of the district's

Moore's future at the school had been a public topic since February, when parents appeared split over whether she should be offered the job permanently. She said she lacked support from parents, staff and school district officials.

John Pile, principal at Barnette Elementary, was assigned to oversee Hunter and Barnette through the end of the school year.

Moore has filed a complaint against the school district. That action is working its way through the grievance process and is scheduled to be heard by the school board.

been a few instances that have caught me by surprise," Hayes said.

He declined to elaborate. MUS General Manager Frank Biondi said he initially interpreted the memo to mean he must first clear media requests with the mayor. But after talking with Hayes on Friday, Biondi said that's not the case. "It's before or after," he said.

Swarnar said having everything go through the mayor is bound to slow down the information. See MEMO, Page B-2

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Bill aids businesses doing own environmental audits

By DOUGLAS FISCHER
Staff Writer

JUNEAU—Companies doing their own environmental audits found a limited relief from state fines under a measure the House passed Friday.

Senate Bill 41 grants limited immunity to businesses that conduct their own audits and reveal any violations. Companies would not face civil or administrative fines, though violations knowingly committed or caused by recklessness could still bring criminal charges.

"This bill in no way protects criminals," said Rep. Jeannette James, R-Fairbanks.

SB 41 also allows companies to keep secret portions of the audit considered self-incriminating. As with the immunity clause, records can only be withheld from civil or administrative hearings. Fraud or noncompliance can force disclosure.

That was not enough to calm Rep. John Davies, D-Fairbanks, who warned that companies could abuse the privilege.

"The state has to prove the violations discovered were unrelated matters to the audit," he said.

Davies tried to restrict the privilege provision, but other lawmakers said the bill's language answered concerns and voted down the amendment.

The administration has no quibbles with the bill, though it is not something the Department of Environmental Conservation would have requested, officials said.

Environmental groups protest the measure as bad public policy, noting businesses largely conduct audits already and need no new incentives.

SB 41 returns to the Senate for concurrence on House changes, then heads to the governor. Davies was the only Interior lawmaker to vote against the bill, which passed 32-4.

Farm bill moves

JUNEAU—Farmers might get that loan after all.

The House on Friday approved a measure removing the state from farm titles, paving the way for farmers to mortgage their land to buy needed equipment.

Alaska farmers have complained for years that lack of a clean title hampers their ability to get a bank loan.

Senate Bill 109 passed the

House with nary debate nor amendment. But lawmakers spent considerable time tinkering with the bill in committee, hoping to appease a governor who vetoed a similar measure last year.

Currently, the state can seize some agricultural property without a court action and prohibits farmers from subdividing most plots.

SB 109 loosens those restrictions and gives farmers fee-simple title to their lands. The bill requires a court ruling before any property is seized and lets owners divide their plots into no more than four parcels—provided each is at least 40 acres and all continue to be farmed.

Unlike last year, anyone—an individual, the state, or a municipality—can sue if a violation is detected.

The bill also removes a host of regulations that, proponents say, permits state micro-management of farms.

Although the governor is "comfortable" with this year's bill, Division of Agriculture Director Jay Keritula still opposes it.

"When farmers and would-be farmers purchased ag-rights land,

they full well knew that they got exceedingly cheap land with farm restrictions," he said in a statement.

Farmers support the bill, saying full ownership gives them more control.

Fairbanks Democrat Rep. John Davies was the only Interior lawmaker to vote against SB 109, which passed 33-3.

Concealed concerns

JUNEAU—Sen. Lyda Green, R-Wasilla, cannot believe someone can openly carry a gun into a restaurant yet cannot carry it there in a pocket or purse—even if that person is licensed to carry a concealed weapon.

So she sponsored a bill to change that. Senate Bill 141, which was heard during a Senate Finance Committee meeting Friday, loosens current concealed-carry laws, allowing permit-holders to carry a weapon anywhere someone can openly carry a gun.

"The main premise is that (rules governing) those who are permitted to carry are consistent with the requirements to carry openly," she said. "The higher standard doesn't seem to make sense."

Those who carry the special permit endure a battery of background checks and must complete special firearms courses, Green noted.

"If you can carry open, you can carry concealed," Green said. Accordingly, SB 141 repeals training required for a permit renewal and limits possession of concealed handguns to wherever federal or state laws permits handguns.

More than 6,300 people are licensed to carry a concealed weapon in Alaska.

SB 141 also offers police officers limited exemptions to concealed-carry regulations and recognizes permits from other states.

Although the bill received enthusiastic support from almost 20 people across the state during Friday's hearing, the bill faces opposition from the governor. "We don't see any reason to broaden the definition of where weapons can be carried," said spokesman Bob King.



Do-gooders need steady supply of victims

By PAUL JENKINS

The tiny woman sprawled on the kitchen floor had been punched and kicked and clubbed to death by a drunken ex-husband. Her own mother wouldn't have recognized her smashed face. She did not die neatly. It took hours. She screamed and cried and pleaded, neighbors reported. The cops came, but the beating continued after they left. She had not wanted the bum arrested.

Blood spattered every wall in her tiny, cluttered house. It pooled on the dirty linoleum in a closet where she tried to hide. It smeared across the floor when the man she once loved dragged her out by her hair.

The scene was not unusual if you covered cops at night as a reporter. There were many women just like her in the Florida city. What was unusual, at least to me, was that she, and other women who suffered the same fate, knew they were in mortal danger, but had not procured a weapon for self-defense. They were victims, even before the first blow was struck; powerless against their attackers.

But that was 20 years ago; this is now.

Sen. Lyda Green, R-Wasilla, recently tried to help domestic violence victims in Alaska. She offered



Jenkins

some welcome changes to Alaska's tough concealed weapon law, including one that would have allowed troopers to immediately grant domestic violence victims — those in danger of further violence — free, 90-day concealed weapons permits so they could better defend themselves. It is not a new idea. California already has a similar provision on the books.

Surely, you'd think, people paid to deal with abuse survivors would welcome such a change here in Alaska. You'd be wrong. Green's office yanked the proposal after heavy flak from the very do-gooders who peddle themselves to government and other funding entities as protectors of domestic violence victims.

There was this, in a letter to Green from Women in Crisis in Fairbanks: "In most cases . . . chances are it's going to be the domestic violence victim who gets hurt or killed. Domestic violence victims are often capable, but not confident."



Or this from the Tundra Women's Coalition in Bethel: "I have no doubt that victims of domestic violence are often in fear of their physical safety. However, I don't believe giving a victim of domestic violence permission to carry a concealed weapon is really a reasonable solution to their need for protection."

And here's my absolute favorite, from a woman in Valdez: "Wouldn't it be a more positive thought to teach children from early kindergarten about conflict resolution, and then continue teaching it all the way through school? Doesn't it make sense to make games people play more fair and less win/lose so everyone feels better about playing?"

What planet are these people from? Why would any of that matter to someone in a fight for their life?

Green's office received other messages, too. Victims — and you get the idea that "victims" and "women" are synonymous to most of the writers — are much too incompetent, weak and timid to defend themselves, and they cannot be trusted with guns. Or, they wrote, it's better to die than be charged with murder if you shoot someone and it is not deemed self-defense. The only good answer, they said, is spending more money on shelters.

Now, a cynic might point out that do-gooders absolutely need victims or they'd be just regular folks, like you and me. Without victims to fret about, what would happen to their jobs, their state and federal grants and — most important — their god-like power over the weak and helpless?

But I won't say that. I'll give the professional hand-wringers the benefit of the doubt. I'll just say this: They are wrong.

Until we as a society can somehow muster the guts to deal harshly with bullies and predators, how can we deny anybody the right to immediate self defense? How can we require insurance companies to continue paying the recurring medical bills of domestic violence victims and then put the victims at risk? How can we do all that — and set up cottage industries to deal with abuse victims — and still kid ourselves that we're not creating more?

Instead of getting the vapors and trying to deny victims — women and men alike — a means of self-defense, do-gooders would do some actual good if they'd sponsor handgun-shooting classes for anybody who has been beaten or raped or stalked — or fears she, or he, might be. It would pay off. History shows that creeps get very nervous when people get fed up.

A case in point: Some years ago, in Orlando, Fla., rapists started targeting nurses as they walked to or from a large city hospital. The Orange County Sheriff's Department, to its credit, offered the nurses handgun classes — and the rapes stopped virtually overnight.

Turns out the rapists were more attuned to the real world than some of the people in a tizzy about Green's proposed legislation.

That's sad.

Paul Jenkins is an editor of The Anchorage Times.

GEORGE MAGAZINE
APRIL 97
PAGE 86



SELF-DEFENSE

JOHN LOTT

Gun control advocates have long argued that the fewer guns there are, the less crime there will be. Now John Lott, an economist at the University of Chicago Law School, is making a compelling case that violent crime rates would actually fall if every sane nonfelon adult could pack heat. "The evidence is very convincing that allowing law-abiding citizens to carry handguns has a net effect in saving lives," Lott says.

In a recent study, Lott crunched crime statistics from the 31 states whose laws allow people to carry concealed weapons as long as they meet certain criteria (usually, not having a criminal record or a history of mental illness). He concluded that such laws led to an 8.5 percent drop in murder rates. If concealed weapons were legal nationwide, he argues, some 1,570 murders, 4,177 rapes, and 60,000 aggravated assaults could have been prevented in 1992 (the last year of the 16-year period covered by his study). Increases in unintentional gun deaths from concealed weapons, Lott says, are next to none. A lean six-foot-three 38-year-old, Lott speaks in professorial flat and passionless as his pronouncements are inflammatory. Pointing out the relatively low cost of guns, he says, "I don't think there's any type of deterrent that's been studied by economists that shows the same cost-benefit ratio."

Lott has a pistol at home, but he says he has no particular affection for guns or pro-gun affiliations. The Violence Policy Center in Washington, however, claims that "the Lott study is indelibly stained with the taint of the gun industry." The VPC says the "taint" results from alleged financial intimacy between the John M. Olin Foundation, which funds Lott's chair at U of C, and the Olin Corporation, whose Winchester division makes bullets. (Lott says he didn't know of any connection.) Meanwhile, Lott's work has won him new phone friends: "I get calls from people in Alaska who want to tell me about their gun collections."—Mike Steere

COPY

LEGAL SERVICES

**DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 466-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 24, 1997

SUBJECT: Persons Prohibited from Possessing Firearms under Federal and State Law (SB 141)

TO: Senator Lyda Green
Attn: Tuckerman Babcock

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have asked who is prohibited under state or federal law from possessing a firearm?

Under Federal Law

18 U.S.C. § 922(g) provides:

- (g) It shall be unlawful for any person--
- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
 - (2) who is a fugitive from justice;
 - (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 302));
 - (4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
 - (5) who, being an alien, is illegally or unlawfully in the United States;
 - (6) who has been discharged from the Armed Forces under dishonorable conditions;
 - (7) who, having been a citizen of the United States, has renounced his citizenship; or
 - (8) who is subject to a court order that--
 - (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
 - (B) restrains such person from harassing, stalking, or threatening an intimate partner or such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

Senator Lyda Green
 March 24, 1997
 Page 2

(C)(i) includes a finding that such person represents a creditable threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence;

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.¹

Under State Law

AS 11.61.200(a)(1) provides that it is unlawful for a person to knowingly possess

¹ Under the federal law "misdemeanor crime of domestic violence" means a crime that:

(i) is a misdemeanor under Federal or State law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

Senator Lyda Green

March 24, 1997

Page 3

a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory.²

There is no general ban in Alaska on the possession of long rifles or shotguns for persons convicted of felonies. Absent a special condition of probation or parole a felon could possess these long weapons without violating state law. Absent the conviction of a felony, persons may be prohibited from possessing firearms as a condition of release before trial for a crime (whether felony or misdemeanor) or through a domestic violence protective order.

GPL:jdr
97-210.jdr

²AS 11.61.200(b)(1) provides an affirmative defense to a person accused of violating AS 11.61.200(a)(1) if

- (A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;
- (B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or
- (C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(1) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory;

LEGAL SERVICES**DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**(907) 485-3867 or 485-2460
FAX (907) 485-2029
Mail Stop 3101100 Seward Street, Suite 409
Juneau, Alaska 99801-2105**MEMORANDUM**

March 24, 1997

SUBJECT: Possession of Concealed Weapons (SB 141)

TO: Senator Lyda Green
Attn: Tuckerman Babcock

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have asked where and when concealed weapons, particularly handguns, may be carried under Alaska law without a concealed handgun permit?

AS 11.61.220(a)(1) makes it a crime to "knowingly possess a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person. . ." Various defenses and affirmative defenses are supplied. First, this section does not apply to a peace officer acting within the scope and authority of the officer's employment. AS 11.61.220(c). AS 11.61.220(d) provides a defense to a person who possesses a concealed weapon on business premises owned or leased by the person or on business premises in the course of the person's employment for the owner or lessee of the premises. Finally, AS 11.61.220(b) provides affirmative defenses allowing a person to possess a concealed weapon in the person's dwelling or on land owned or leased by the person or while engaged in "lawful hunting, fishing, trapping, or other outdoor activity that necessarily involves the carrying of a weapon for personal protection."

AS 11.61.220(a)(2) also makes it a crime to possess a loaded firearm on the person (regardless of whether the firearm is concealed or not) in any place where alcoholic beverages are sold for consumption on the premises. AS 11.61.210(a)(1) provides that it is illegal to possess on the person (again, regardless of whether the firearm is concealed or openly displayed) or in the interior of a vehicle in which the person is present, a firearm when the person is impaired by intoxicating liquor or controlled substances. Finally, AS 11.61.210(a)(7) provides that a person may not possess a deadly weapon on school grounds without permission of the chief administrative officer of the school or district.

GPI:jdr
97-211.jdr

ALASKA COURT SYSTEM
OFFICE OF THE ADMINISTRATIVE DIRECTOR
ADMINISTRATIVE BULLETIN NO. 30
(Amended Effective January 15, 1989)

TO: ALL HOLDERS OF ADMINISTRATIVE BULLETIN SETS:

Area Court Administrators	Presiding Judges
Clerk of the Appellate Courts	Senior Staff
Third District Rural Training Assistant	Administrative Associate
Full-Time Clerks of Court	
Magistrates at locations with no full-time clerk	
Law Libraries at Anchorage, Fairbanks, Juneau & Ketchikan	

SUBJECT: Firearms

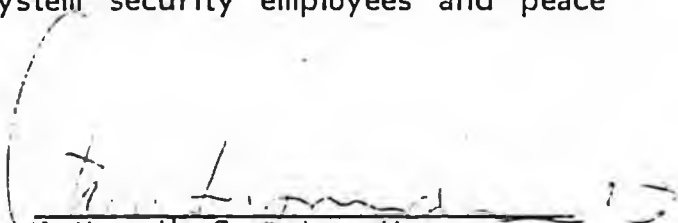
No firearms or other weapons may be brought onto the premises of any court facility, or into the portion of any other building occupied by the court system, except for weapons which are to be used as evidence in court proceedings.

Weapons to be used as evidence in court proceedings must be marked and prepared in accord with the terms of Administrative Bulletin No. 9, section IV(C). Each presiding judge may prescribe procedures for courts within his or her district requiring prior notification to designated court personnel before weapons to be used as evidence may be brought on court premises.

This bulletin does not apply to court system security employees and peace officers.

Dated: 10-24-88

Effective Date: January 15, 1989


Arthur H. Snowden, II
Administrative Director

This bulletin was originally issued as No. 86-7, effective December 17, 1986. Amended to correct reference to Bulletin No. 9.

Original Distribution:

Supreme Court Justices
Presiding Judges
Area Court Administrators
Stephanie Cole
Gerry Dubie
David Lampen

NOTES TO DECISIONS

Quoted in *Delahay v. State*, 476 P.2d 908 (Alaska 1970).

Section 13. Compensation. Justices, judges, and members of the judicial council and the Commission on Judicial Qualifications shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State.

Revisor's notes. — CSHJR 32(Jud) am S (1961), effective December 24, 1982, which changed the "Commission on Judicial Qualifications" to the "Commission on Judicial Conduct" inadvertently omitted express amendment of this section.

Effect of amendments. — The amendment, effective October 11, 1968 (5th Legislature's 2d FCCS SCS CSHJR 74 (1968)), inserted "and the Commission on Judicial Qualifications" in the first sentence.

NOTES TO DECISIONS

"Term". — With the exception of this article, wherever "term" or "service at the pleasure of" appears in the constitutional text originally adopted, the reference is to a period of service for a particular office, thus allowing the drafters to be precise in their terminology. The language of this section and § 4 of this article, on the other hand, applies to any judge of any court the legislature might create, and "term" in that context may intend only the more general,

though equally valid connotation of any limitation on a period of service. *Buckalew v. Holloway*, 604 P.2d 240 (Alaska 1979).

"Term of office" as used in this section means the time to which a justice or judge is entitled to hold office and does not relate to the 10-year or six-year intervals between retention elections for justices and judges. *Hudson v. Johnstone*, 660 P.2d 1180 (Alaska 1983).

Collateral references. — 46 Am.Jur.2d, Judges, §§ 62 to 71. 48A C.J.S., Judges, §§ 75 to 81, 84.

Section 14. Restrictions. Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions. Any supreme court justice or superior court judge filing for another elective public office forfeits his judicial position.

Opinions of attorney general. — The prohibition against dual office holding is literally enforced in Alaska. December 27, 1976 Op. Att'y Gen.

The purpose of the prohibition against dual office holding is to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers in regard to the exercise of the executive, judicial, and legislative functions of the state government. December 27, 1976 Op. Att'y Gen.

Since the Board of Regents of the University of Alaska is not an interbranch commission, a judge may not sit as a regent while holding office. December 27, 1976 Op. Att'y Gen.

A judge does not sit on the Board of Regents in a representative capacity of the judicial branch. When he sits as a regent he is not exercising judicial power but rather certain executive powers of control vested in the regents over the state's sole institution of higher learning. This he may not do. December 27, 1976 Op. Att'y Gen.

The University of Alaska is an instrumentality of the state, and membership on its Board of Regents is necessary an office under the state. December 27, 1976 Op. Att'y Gen.

NOTES TO DECISIONS

Meaning of phrase "position of profit". — See *Begich v. Jefferson*, 441 P.2d 27 (Alaska 1968).

And its intent. — The term "position of profit" was intended to prohibit all other salaried non-temporary

employment under the United States or the State of Alaska. *Begich v. Jefferson*, 441 P.2d 27 (Alaska 1968).

Applied in *Acevedo v. City of N. Pole*, 672 P.2d 130 (Alaska 1983).

Section 15. Rule-Making Power. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules

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may be changed by the legislature by two-thirds vote of the members elected to each house.

NOTES TO DECISIONS

- I. General Consideration.
- II. Legislative Review.

I. GENERAL CONSIDERATION.

Scope of rule-making power. -- The supreme court's rule-making power under this section is explicitly broad and very nearly complete. Citizens Coalition for Tort Reform, Inc. v. McAlpine, 810 P.2d 162 (Alaska 1991).

Authority to enact procedures is judicial. -- While the power to create substantive rights is a legislative power, the authority to enact procedures to implement those rights is, by virtue of this section, judicial. Thomas v. State, 566 P.2d 630 (Alaska 1977).

In Alaska, the supreme court is given exclusive, initial power to make rules governing practice and procedure and they need not look to the legislature's intentions to discern whether it has attempted to prescribe a different procedure than that contained in a court rule, unless the legislature has acted in the requisite manner to change a rule. Nolan v. Sea Airmotive, Inc., 627 P.2d 1035 (Alaska 1981).

Because administration of justice is day-to-day business of courts. -- A reason for placing in the judicial branch of government rather than in the legislature the initial and primary responsibility for making rules of court practice and procedure is that the administration of justice is the day-to-day business of the courts; they are better equipped than a legislature to know the most effective and easiest methods of conducting that business. City of Valdez v. Valdez Dev. Co., 506 P.2d 1279 (Alaska 1973).

Promulgation of rules of practice and procedure. -- The superior court has no responsibility or authority to promulgate rules of practice and procedure. Lee v. State, 374 P.2d 868 (Alaska 1962).

Under this section the responsibility for promulgating rules governing practice and procedure in civil and criminal cases in all courts rests with the supreme court. Lee v. State, 374 P.2d 868 (Alaska 1962).

Supreme court can return case to trial court for further proceedings. -- In any appropriate case where there is disregard for the rules of court, the supreme court can exercise its supervisory power to return the case to the trial court for further proceedings. McCracken v. Davis, 560 P.2d 771 (Alaska 1977).

Declaration of appellate rule supremacy over procedural statutes is an expression of the judicial power distributed to the courts by this section and § 1 of this article. Winegardner v. Greater Anchorage Area Borough, 534 P.2d 541 (Alaska 1975).

Distinction between substantive and procedural law. -- Substantive law creates, defines and regulates rights, while procedural law prescribes the method of enforcing the rights. Channel Flying, Inc. v. Bernhardt, 451 P.2d 570 (Alaska 1969); Nolan v. Sea Airmotive, Inc., 627 P.2d 1035 (Alaska 1981).

For the court to invalidate a statute as "procedural," requires them to find, first, that the statute indeed conflicts with a rule promulgated by the court, and, second, that the main subject of the statute is not substantive with only an incident effect on procedure. Winegardner v. Greater Anchorage Area Borough, 534 P.2d 541 (Alaska 1975), Channel Flying, Inc. v. Bernhardt, 451 P.2d 570 (Alaska 1969), and finally,

that the legislature has not changed the rule with the stated intention of doing so, *Leege v. Martin*, 379 P.2d 447 (Alaska 1963), *Nolan v. Sea Airmotive, Inc.*, 627 P.2d 1035 (Alaska 1981).

The manner in which the exercise of judicial power may be invoked, initially by commencing a civil action in court, is a matter directly involved with court practice and procedure, the regulation of which has been committed to the supreme court under the constitution. *Silverton v. Marler*, 389 P.2d 3 (Alaska 1964).

Children's proceedings are among "civil and criminal cases in all courts" over which this section gives the supreme court rule-making authority which is intended to be plenary and not capable of reduction by relabeling of proceedings. *RLR v. State*, 487 P.2d 27 (Alaska 1971).

The investigative demand procedure set forth in AS 45.50.590 and 45.50.592 does not conflict with the rulemaking power vested in the Supreme Court by this section insofar as it involves hearings to modify or set aside investigative demands and not proceedings to compel production of document. *Matanuska Maid, Inc. v. State*, 620 P.2d 182 (Alaska 1980).

The time limit for filing an appeal from an administrative order is a procedural matter and is therefore subject to the Alaska supreme court's supremacy over such matters pursuant to this section. *Owsishek v. State, Guide Licensing & Control Bd.*, 627 P.2d 616 (Alaska 1981).

AS 47.10.070, providing for exclusion of the public from juvenile hearings, is procedural, so is outside the scope of legislative authority unless two-thirds of each house of the legislature votes to change the rule promulgated by the supreme court in this matter. *RLR v. State*, 487 P.2d 27 (Alaska 1971).

AS 22.20.022 is not constitutionally invalid as an attempt to usurp the rule-making powers of the supreme court insofar as it provides for a peremptory disqualification of a judge. *Channel Flying, Inc. v. Bernhardt*, 451 P.2d 570 (Alaska 1969).

AS 22.20.022 does not merely regulate procedure. With or without it the particular action in court takes the same course. The statute rather creates and defines a right -- the right to have a fair trial before an unbiased and impartial judge. This is something more than merely prescribing a method of enforcing a right. The main subject matter of AS 22.20.022 is substantive in nature and was within the province of the legislature to deal with. *Channel Flying, Inc. v. Bernhardt*, 451 P.2d 570 (Alaska 1969).

Right under AS 22.20.022 subject to rule-making power. -- While recognizing the legislature's authority to create the right to disqualify a judge by peremptory challenge under AS 22.20.022, the procedure to be followed in implementing that right is subject to the rule-making power vested in the supreme court by this section. *Padie v. State*, 566 P.2d 1024 (Alaska 1977).

Criminal Rule 24(d) is not unconstitutional insofar as it purports to allow the prosecution peremptory challenges of jurors. *Smiloff v. State*, 589 P.2d 28 (Alaska 1978).

NOTES TO DECISIONS

Marijuana included. — Because neither AS 11.56.375 nor this section, both of which outlaw the promotion of contraband, including controlled substances, in correctional facilities, defined "controlled substance," there was reference to the general definition in the revised code for guidance; as of January 1, 1983, the revised code clearly defined controlled sub-

stances to include marijuana. State v. Resek, 706 P.2d 706 (Alaska Ct. App. 1985).

Quoted in Cleland v. State, 759 P.2d 552 (Alaska Ct. App. 1988).

Cited in Lefever v. State, 877 P.2d 1298 (Alaska Ct. App. 1994); Milton v. State, 879 P.2d 1031 (Alaska Ct. App. 1994).

Sec. 11.56.390. Definition. In AS 11.56.300 — 11.56.390, "contraband" means any article or thing which persons confined in a correctional facility are prohibited by law from obtaining, making, or possessing in that correctional facility. (§ 6 ch 166 SLA 1978)

Cross references. — For definition of terms used in this chapter, see AS 11.56.900; for definition of terms used in this title, see AS 11.81.900.

Article 4. Offenses Relating to Judicial and Other Proceedings.

Section

- 510. Interference with official proceedings
- 520. Receiving a bribe by a witness or juror
- 540. Tampering with a witness in the first degree
- 545. Tampering with a witness in the second degree

Section

- 590. Jury tampering
- 600. Misconduct by a juror
- 610. Tampering with physical evidence
- 620. Simulating legal process

Collateral references. — 58 Am. Jur. 2d, Obstructing Justice, §§ 1-9, 25-29.
67 C.J.S., Obstructing Justice, §§ 1-22.

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Ans'a

Sec. 11.56.510. Interference with official proceedings. (a) A person commits the crime of interference with official proceedings if the person

(1) uses force on anyone, damages the property of anyone, or threatens anyone with intent to

- (A) improperly influence a witness or otherwise influence the testimony of a witness;
- (B) influence a juror's vote, opinion, decision, or other action as a juror;
- (C) retaliate against a witness or juror because of participation by the witness or juror in an official proceeding; or

- (D) otherwise affect the outcome of an official proceeding; or
- (2) confers, offers to confer, or agrees to confer a benefit
 - (A) upon a witness with intent to improperly influence that witness; or
 - (B) upon a juror with intent to influence the juror's vote, opinion, decision, or other action as a juror or otherwise affect the outcome of an official proceeding.

(b) Interference with official proceedings is a class B felony. (§ 6 ch 166 SLA 1978)

NOTES TO DECISIONS

For case construing former AS 11.30.920, prohibiting influencing witnesses, judges or jurors or obstructing administration of justice, see Williams v. United States, 265 F.2d 214 (9th Cir. 1959).

This section applies broadly to all official proceedings. State v. Jones, 750 P.2d 828 (Alaska Ct. App. 1988).

Use of parental force. — Paragraph (a)(1) does not, as a matter of law, categorically preclude a defense based on justified use of parental force under AS 11.81.430(a)(1). State v. Jones, 750 P.2d 828 (Alaska Ct. App. 1988).

Indictment charging parents with interference with official proceedings was properly dismissed, where the parents' use of force in arranging for children to fly to Arizona in order to prevent them from testifying in a child abuse case was limited to that typical of any parental or custodial relationship. State v. Jones, 750 P.2d 828 (Alaska Ct. App. 1988).

Where defendant pointed his finger angrily at his child and yelled "Remember the rule" in a menacing tone as police were removing the child from the household after a report of abuse, a reasonable juror could readily have concluded that defendant's words

were spoken as a threat in from cooperating with the a 820 P.2d 1088 (Alaska Ct. App. 1988).

The parental justification 11.81.430(a)(1) is not defendant's knowledge or belief of the defense is available only lawful custodians of children for interference with question for the jury was believed herself to be. Corn (Alaska Ct. App. 1996).

Under the parental justification AS 11.81.430(a)(1), the test actions were reasonably necessary to promote her child's welfare thus, in a prosecution for proceedings, the question for defendant subjectively necessary and appropriate, but in fact reasonably necessary. Cornwall v. State, 915 P.2d 1996.

Retaliation against a state proved defendant committed apparently unprovoked assault.

Sec. 11.56.520. Receiving a bribe by a witness or juror. A person commits the crime of receiving a bribe by a witness or juror if the person

- (1) the person will
- (2) the person's vote
- (b) Receiving a bribe

Sec. 11.56.540. Tampering with physical evidence. A person commits the crime of tampering with physical evidence if the person

- (1) testify falsely, in an official proceeding; or
- (2) be absent from an official proceeding
- (b) Tampering with physical evidence is a class B felony. (§ 6 ch 122 SLA 1978; am § 1 ch 122 SLA 1978)

Scope of provisions. — with a witness statute, extend its provisions only to a witness lawfully summoned to appear in court. State v. Jones, 750 P.2d 828 (Alaska Ct. App. 1988).

Evidence sufficient to sustain a conviction for tampering with physical evidence was sufficient to sustain a conviction for tampering with physical evidence where the defendant dissuaded his wife from giving testimony.

Collateral references. — This section begins to run on chapter 11, § 81, of the Criminal Code, which defines the crime of conspiring to do so, 77

Admissibility in criminal trial. — Evidence of defendant's guilt, of evidence

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Sec. 11.56.370. Permitting an escape. (a) A public servant who is required by law to have charge of a person arrested for, charged with or convicted of a crime commits the crime of permitting an escape if with criminal negligence the public servant permits a person under official detention to escape.

(b) Permitting an escape is a class C felony. (§ 6 ch 166 SLA 1978; am § 20 ch 102 SLA 1980)

Legislative history reports. — For a report on 1980 House Journal Supplement, No. 79, May 29, Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or

NOTES TO DECISIONS

For case construing former AS 11.30.180, concerning an officer's not executing process whereby a person escapes, see *Larson v. State*, 564 P.2d 365 (Alaska 1977).

Cited in *Lefever v. State*, 877 P.2d 1298 (Alaska Ct. App. 1994).

Sec. 11.56.375. Promoting contraband in the first degree. (a) A person commits the crime of promoting contraband in the first degree if the person violates AS 11.56.380 and the contraband is

- (1) a deadly weapon or a defensive weapon;
- (2) an article that is intended by the defendant to be used as a means of facilitating an escape; or
- (3) a controlled substance.

(b) Promoting contraband in the first degree is a class C felony. (§ 6 ch 166 SLA 1978; am § 3 ch 59 SLA 1991)

Effect of amendments. — The 1991 amendment, effective September 15, 1991, added "or a defensive weapon" to the end of paragraph (a)(1).

NOTES TO DECISIONS

Constitutionality. — This section is not violative of an inmate's right to privacy in view of the fact that such right of an inmate is substantially limited and does not extend to protect possession of marijuana in a correctional institution. *Cleland v. State*, 759 P.2d 553 (Alaska Ct. App. 1988).

This statute is not unconstitutional in that it punishes the crime of possession of marijuana in a correctional facility more severely than possession of alcohol, since the statute is not inconsistent with the respective legal treatment of alcohol and marijuana for the general population. *Cleland v. State*, 759 P.2d 553 (Alaska Ct. App. 1988).

The term "controlled substance" in this sec-

tion includes marijuana. *State v. Resek*, 706 P.2d 706 (Alaska Ct. App. 1985).

Because neither this section nor AS 11.56.380, both of which outlaw the promotion of contraband, including controlled substances, in correctional facilities, defined "controlled substance," there was reference to the general definition in the revised code for guidance; as of January 1, 1983, the revised code clearly defined controlled substances to include marijuana. *State v. Resek*, 706 P.2d 706 (Alaska Ct. App. 1985).

Cited in *Jennings v. State*, 713 P.2d 1222 (Alaska Ct. App. 1986); *Brown v. State*, 809 P.2d 421 (Alaska Ct. App. 1991).

Sec. 11.56.380. Promoting contraband in the second degree. (a) A person commits the crime of promoting contraband in the second degree if the person

- (1) introduces, takes, conveys, or attempts to introduce, take, or convey contraband into a correctional facility; or
- (2) makes, obtains, possesses, or attempts to make, obtain, or possess anything that person knows to be contraband while under official detention within a correctional facility.

(b) Promoting contraband in the second degree is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

ALASKA STATE LEGISLATURE

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SENATOR LYDA GREEN

SENATE DISTRICT N

CSSB141(FIN)

A committee substitute, which I supported, was adopted initially by Senate Finance. The changes in SB141 (version X) are reflected in the sponsor statement and sectional commentary.

Two additional amendments were adopted in Senate Finance and one amendment was rejected.

Senator Phillips offered an amendment (adopted 4-3) to mandate that in all cases, for each visit to the home, a person entering a home or property must announce that he or she is carrying a permitted concealed handgun. The homeowner is given no choice in the matter, but is required under Senator Phillips' amendment to force all visitors to announce they are carrying a permitted handgun. Failure to announce constitutes a class B misdemeanor for the permittee. No provision is made for anyone who does not wish to subject visitors to their home to this strange mandate. That new criminal penalty and mandate appears unenforceable, insignificant, and somewhat specious.

Senator Donley offered an amendment (adopted unanimously), which I supported, to leave in statute the provision that a repeat class A misdemeanor violation will result in the loss of a concealed carry permit.

Senators Adams and Phillips introduced an amendment that would have amended criminal law to prohibit carrying handguns openly or permitted concealed in a number of places. This amendment failed 2-5. I objected to this amendment on several points.

First, SB141 is about permitting concealed handguns, not about extending gun control to various locations around Alaska.

Second, SB141 is simply about extending the same right to carry to fingerprinted, background checked, trained permittees as currently enjoyed by almost every adult in Alaska to carry open.

Finally, SB141 does not alter existing law restricting open carry anywhere in Alaska. SB141 repeals special provisions in law that restricted only permitted concealed carry. Given the experience of every other state with permitted concealed and given Alaska's experience during the last three years, there is no reason to continue to be more restrictive with our background checked, trained, fingerprinted permittees than the some 300,000 adults free to carry handguns openly.

2

LEGAL SERVICES

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Juneau, Alaska 99801-2105

MEMORANDUM

April 29, 1997

SUBJECT: Possession of Firearms (Work Order No. 20-LS0706\C)

TO: Senator Lyda Green
Attn: Tuckerman Babcock

FROM: Gerald P. Luckhaupt *GL*
Legislative Counsel

RECEIVED
APR 29 1997
Ans'd.....

You have asked where state and federal law prohibit the carrying of open and unconcealed firearms by an adult who is not a felon or who otherwise suffers any other legal disability or impediment to possession of a firearm. While I believe I can identify most of the places where openly carried firearms cannot be carried under state law, I can only attempt to identify all of the places where federal law prohibits the carrying of firearms due to the time constraints presented with the production of this memorandum.¹

State Law

Places

AS 11.61.210(a)(7) prohibits the possession of a firearm within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, secondary school, or while participating in a school sponsored event, without the permission of the chief administrative officer of the school or district.

AS 11.61.220(a)(2) prohibits the possession of a firearm on the person in any place where intoxicating liquor is sold for consumption on the premises.

AS 11.61.220(a)(4) prohibits the possession of firearms within the grounds of or on a parking lot adjacent to a child care center, other than a private residence, licensed under AS 47.33 or AS 47.35 or recognized by the federal government for the care of children.

¹This memorandum does not attempt to identify the situations when the discharge of a firearm is unlawful, even though the possession of the firearm in that situation may be lawful. See, e.g., AS 11.61.190(a)(2).

While I have not attempted to scour the state administrative code to discover regulations restricting the possession of firearms, I can point out a few such instances. **17 AAC 40.040(b)** prohibits the possession of loaded firearms at airports. The schedule for the Alaska Marine Highway System provides that passengers may not possess firearms, although I have not identified the regulation that prohibits the possession of firearms by passengers. **17 AAC 70.110(1)(D)** does provide the ferry system with the authority to refuse to transport "any person who, in the opinion of the master of the vessel, might jeopardize the safety of the vessel or passengers or bring extreme discomfort to other passengers." The Alaska Court System has promulgated a policy that prohibits the possession of firearms in court facilities. The Juneau Empire carried a story a few weeks ago concerning the possession of firearms in the Capitol wherein a policy promulgated by Legislative Council was described that prohibited the possession of firearms in the Capitol. I do not have other information about this policy but I am making inquiries.

Circumstances

AS 11.61.190(a)(1) and 11.61.195(a)(1) prohibit the use or possession of a firearm during the commission of an offense under our controlled substance laws, AS 11.71.010 - 11.71.040.

AS 11.61.200(a)(3) prohibits the possession of a "prohibited weapon" which includes silencers and fully automatic firearms. See AS 11.61.200(f).

AS 11.61.200(a)(7) prohibits the possession of a firearm while the possessor's condition is impaired by liquor or controlled substances when the person is committing a violation of AS 11.46.320, trespass in the first degree.

AS 11.61.200(a)(8) prohibits the possession of a firearm while a person is committing trespass in the first or second degrees, AS 11.46.320 - 11.46.330, in violation of a domestic violence restraining order.

AS 11.61.200(a)(9) prohibits the possession of a firearm while the possessor is communicating with another person in violation of AS 11.56.740, violating a domestic violence restraining order.

AS 11.61.210(a)(1) prohibits the possession of firearm while the possessor is impaired by alcohol or controlled substances.

AS 11.56.375(a)(1) prohibits a person from taking a firearm into a correctional facility.

Senator Lyda Green

April 29, 1997

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Federal Law

18 USC 922(q), the 1996 Gun-Free School Zones Act, prohibits the possession of firearms within a school zone, unless the possessor qualifies for one of the delineated exceptions.

18 USC 930 prohibits the possession of firearms in federal facilities.

49 USC 46303 prohibits the possession of a firearm when attempting to board an aircraft.

49 USC 46505 prohibits the possession of a firearm on board an aircraft.

14 CFR 107.21 prohibits the possession of a firearm when entering or in a sterile area of an airline terminal.

Contrary to the normal policy in the other 49 states, firearms may normally be possessed in National Parks in Alaska, "in accordance with applicable Federal and State laws, except where carrying is prohibited or otherwise restricted pursuant to [36 CFR 13.30]." 36 CFR 13.19(b).

While I have attempted to be as thorough as possible there quite possibly could be additional restrictions. Please do not consider this list as definitive on the subject.

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