

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9708 SENATE RULES

**SB**

**273**

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 273(FIN)

- 1 Page 2, line 2:
- 2 Delete "and relating to the duties of a gaming manager"
  
- 3 Page 7, lines 9 - 12:
- 4 Delete all material.

(NOT CONSIDERED OR  
HEARD BY COMMITTEE)



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### SENATE FINANCE COMMITTEE

### **CS SB 273 (FIN) SPONSOR STATEMENT**

February 26, 1998

This legislation will ensure that out of every dollar wagered, a certain minimum portion will ultimately be dedicated to charitable purposes. It will also substantially simplify the required accounting for the Department of Revenue, charities and the operators of charities' permits and improve the Department's ability to enforce compliance with the State's charitable gaming laws. Finally, this legislation is intended to maintain the status quo with respect to the relative amounts 1) available for gaming operations, 2) collected in state fees, and 3) returned to the charities for charitable uses.

Current Alaska law bases the amount that a charity or a charity's licensed operator must generate for charitable purposes on net gaming proceeds. The law describes what a charity or an operator can and cannot claim as an allowable operating expense when determining net proceeds, which can impact otherwise sound business decisions. In addition, this requires the charities, their operators and the state to all generate, review and often audit a substantial amount of accounting data. This is time consuming and can be expensive for everyone.

This legislation would base the amount required to be dedicated for charitable purposes on gross gaming receipts. This would substantially simplify reporting and eliminate the need to audit allowable expenses. In addition, a new requirement that gaming managers for multiple-beneficiary permit holders and self directed charities be certified by the Department would provide the Department with a way to enforce compliance with the statutes without punishing those charities and managers who currently operate within the law.

The Department of Revenue strongly supports this legislation. It will simplify and improve program oversight and enforcement, reducing the cost of processing gaming reports. It will enable the Department to expend more of its recently streamlined gaming oversight efforts on auditing and enforcement.

SENATE FINANCE COMMITTEE  
**CS SB 273 (FIN) SECTIONAL ANALYSIS**

February 26, 1998

- Sec. 1:* Amends AS 05.15.020(b) designating the existing state fee as the "gaming fee" and substituting "charitable share" for "net proceeds".
- Sec. 2:* Amends AS 05.15.060(a), the Department's authority to adopt regulations,
- a. adding gaming manager certificates to the list of items in subsections (1) and (3) that department may regulate;
  - b. substituting gross receipts for the references to authorized expenses and net proceeds in subsection (2);
  - c. making explicit in subsection (2) the Department's authority to adopt regulations to assure the timely payment of the charitable share, currently implied in subsection (11);
  - d. adding gaming managers to the list of persons in subsection (5) that may be investigated;
  - e. expanding the language in subsection (7) to make it more clear who can hold a multiple-beneficiary permit (MBP); and
  - f. adding gaming managers to the list of entities in subsection (9) for which the Department may regulate the disposition of gaming funds in their possession upon surrender, revocation or invalidation of the gaming manager's certificate.
- Sec. 3:* Amends AS 05.15.060 by adding a new subsection (c) making it clear that the gaming records collected by the Department are public, but only after 90 days of receipt of those records.
- Sec. 4:* Amends AS 05.15.070 by adding gaming managers to the list of persons whose books and records the Department may examine in conjunction with a gaming investigation.
- Sec. 5:* Amends AS 05.15.070 by adding a new subsection (b) requiring municipalities that levy sales taxes on permittees, operators or vendors to provide copies of the sales tax reports to the department upon the department's request.
- Sec. 6:* Amends AS 05.15.080 by substituting "charitable share" for "net proceeds", deleting the references to authorized expenses, requiring reports for each activity, and substituting "gaming fee" for "additional fee".

SENATE FINANCE COMMITTEE  
**CS SB 273 (FIN) SECTIONAL ANALYSIS**  
February 26, 1998

- Sec. 7:* Amends AS 05.15.083 by substituting "charitable share" for "net proceeds", deleting the references to authorized expenses and requiring reports for each activity.
- Sec. 8:* Amends AS 05.15.083 by adding a new subsection (c) requiring an operator to deliver to the permittee a copy of the financial reports submitted to the department, and certify to the department that the copies have been delivered.
- Sec. 9:* Repeals and re-enacts AS 05.15.087(a) requiring an operator to pay the permittee the charitable share due from gaming activity conducted during a calendar quarter by the 15<sup>th</sup> of the month following the quarter.
- Sec. 10:* Amends AS 05.15.105(a) by adding a specific reference to gaming managers to the list of roles in which a gambling law violator may not serve.
- Sec. 11:* Adds a new section AS 05.15.114
- a. prohibiting a person from serving as a gaming manager without certification from the department;
  - b. prohibiting permittees from employing a gaming manager who is not certified by the department;
  - c. requiring the department to certify as a gaming manager a person who meets specified conditions; and
  - d. defining some specific responsibilities of a gaming manager.
- Sec. 12:* Amends AS 05.15.115(b) by deleting the reference to expenses and adding language that will explicitly prohibit a charity from paying any of the expenses of an operator. This will ensure that the charitable share is not directly or indirectly reduced.
- Sec. 13:* Amends AS 05.15.115(d) by deleting the requirement that the department either approve or disapprove operator contracts, retaining the ability of the department to declare an operator's contract void.
- Sec. 14:* Repeals and re-enacts AS 05.15.128(a)
- a. requiring the department to revoke the license of an operator who fails to remit at least the minimum charitable share to the permittee;

SENATE FINANCE COMMITTEE  
**CS SB 273 (FIN) SECTIONAL ANALYSIS**

February 26, 1998

and

- b. setting the minimum charitable share from
  - 1. bingo at 1.5% of gross receipts;
  - 2. pull-tabs at 7 % of gross receipts; and
  - 3. all other gaming at 10% of gross receipts.

*Sec. 15:* Amends AS 05.15.145(a) to require MBPs to utilize a gaming manager.

*Sec. 16:* Amends AS 05.15.145(d) by adding reporting and payment requirements for holders of MBPs that are consistent with operator requirements.

*Sec. 17:* Amends AS 05.15.145 by adding new subsections (e) and (f)

- a. requiring the department to revoke a MBP if the MBP holders fail to distribute at least the minimum charitable share to the holders of the MBP;
- b. setting the minimum charitable share from
  - 1. bingo at 1.5% of gross receipts;
  - 2. pull-tabs at 7 % of gross receipts; and
  - 3. all other gaming at 10% of gross receipts; and
- c. making MBPs subject to most of the same requirements placed on operators, leveling the playing field.

*Sec. 18:* Amends AS 05.15.150 by

- a. substituting "charitable share" for "net proceeds"; and
- b. simplifying the sentence structure of the statute.

*Sec. 19:* Amends AS 05.15.150 by adding a new subsection (c) that would allow a dog musher's association to use the charitable share realized in one year for dog musher's contest prizes in the next year.

*Sec. 20:* Amends AS 05.15 by adding a new section 155

- a. requiring the department to revoke the permit of a municipality or qualified organization which fails to distribute or dedicate at least the minimum charitable share to the purposes required by AS 05.15.150; and

SENATE FINANCE COMMITTEE  
**CS SB 273 (FIN) SECTIONAL ANALYSIS**

February 26, 1998

- b. setting the minimum charitable share from
  - 1. bingo at 1.5% of gross receipts;
  - 2. pull-tabs at 7 % of gross receipts; and
  - 3. all other gaming at 10% of gross receipts.

*Sec. 21:* Amends AS 05.15.165(a) by substituting "charitable share" for "net proceeds."

*Sec. 22:* Amends AS 05.15.165(f) by substituting "gross receipts" and "charitable share" for "net proceeds."

*Sec. 23:* Amends AS 05.15 by adding a new section 166 to authorize operators and holders of MBPs to pool gross receipts, prizes and door prizes by activity. This will simplify the accounting requirements for operators and the department without adversely impacting the amounts provided to the charities.

*Sec. 24:* Amends AS 05.15.167(a) by substituting "charitable share" for "net proceeds."

*Sec. 25:* Amends AS 05.15.167(b) by substituting "charitable share" for "net proceeds."

*Sec. 26:* Amends AS 05.15.170

- a. adding gaming manager certificates to the list of permits, licenses and registrations that may be suspended or revoked for the any of the reasons currently listed in statute;
- b. prohibiting the department from subsequently certifying as a gaming manager for at least 1 year but not more than 5 years a person whose gaming manager certificate has been revoked; and
- c. prohibiting the department from subsequently issuing a MBP for at least the 1 subsequent year, but not more than 5 subsequent years, to any organization whose MBP has been revoked.

*Sec. 27:* Repeals and reenacts AS 05.15.180(g) to base gaming limitations on gross receipts rather than prize payouts, except for bingo. Bingo limitations will remain based on prizes. This will add consistency and reduce the required accounting without abandoning a workable system for

SENATE FINANCE COMMITTEE  
**CS SB 273 (FIN) SECTIONAL ANALYSIS**

February 26, 1998

bingo.

- Sec. 28:* Amends AS 05.15.188(h) by substituting "ideal gross" for "ideal net" and reducing the percentage to a level that will return approximately the same amount to the permittee.
- Sec. 29:* Repeals and reenacts AS 05.15.188(i) by removing the ideal net provisions and more clearly describing the vendor payment process.
- Sec. 30:* Amends AS 05.15.680(b) making a person who make a false statement in an application for a gaming manager certificate guilty of unsworn falsification.
- Sec. 31:* Amends AS 05.15.690(21) by redefining "gross receipts" to exclude local sales and federal excise taxes collected and otherwise clarify the definition.
- Sec. 32:* Amends AS 05.15.690(23) by substituting the definition of "ideal gross" for the definition of "ideal net".
- Sec. 33:* Amends AS 05.15.690 by adding two new paragraphs;
- a. (46) defining "charitable share"; and
  - b. (47) defining "gaming manager."
- Sec. 34:* Repeals
- a. AS 05.15.087(b) and AS 05.15.87(c), sections pertaining to reporting requirements that have been made unnecessary by the amendments made in sections 7 and 8 of this legislation; and
  - b. AS 05.15.160, 05.15.165(b) and 05.15.690(29), sections that pertain to authorized expenses and net proceeds.
- Sec. 35:* Authorizes the department to proceed with regulation changes prior to the effective date of the statutory amendments, provided the amendments to the regulations do not take effect prior to the effective date of the statutory changes.
- Sec. 36-37:* Establish effective dates.

FISCAL NOTE

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Charitable Gaming BRU: Revenue Operations  
 Component: Income and Excise Audit  
 Sponsor: Senate Finance  
 Requestor: Senate Finance COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1001 CBRF						
1048 University of AK receipts						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Operating Expenditures

The department does not anticipate an increase or decrease in operating expenditures as a result of this legislation. The changes are necessary to help the tax division cope with merging the gaming program into the division after the FY98 operating budget allocated to gaming was cut \$300,000 (33%) in FY98.

State Revenue

The department does not anticipate any change in state revenue as a result of this legislation.

Prepared by: Robert N. Bartholomew  
 Division: Income and Excise Audit  
 Approved by Commissioner: Wilson L. Condon *Kass A. Kurray*  
 Agency: Revenue

Phone: 465-4773  
 Date: February 27, 1998  
 Date: February 27, 1998

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**SB**

**281**

KODIAK OFFICE  
112 MILL BAY ROAD  
KODIAK, ALASKA 99615  
(907) 486-4925  
(907) 486-5264 (FAX)



STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
(907) 465-4925  
(800) 821-4925 (TOLL FREE)  
(907) 465-3517 (FAX)

# **SENATOR JERRY MACKIE**

**ALASKA STATE LEGISLATURE**

## **SPONSOR STATEMENT**

### **SB 281, Yakutat Municipal Land Grant.**

SB 281 is introduced to complete the formation of the Yakutat Borough and the land entitlements that the state grants to support local government. Initially, the petition of the people of Yakutat to incorporate as a borough in 1992 was considerably reduced in size by the Local Boundary Commission. The land entitlement for the new borough by the formula of 10 % of "vacant, unappropriated, and unreserved" (vuu) state lands was a mere 138 acres.

The City and Borough of Yakutat subsequently petitioned the Local Boundary Commission to reclaim much of the area on its Northern border. In a reversal of its earlier decision, the Local Boundary Commission approved the annexation which contains a substantial amount of state "vuu" lands. It is estimated that if the annexed area had been included for the original borough formation, the municipal land entitlement would amount to 33,000 acres.

It has been a long established policy for the state to assist the formation and operation of local governments with generous grants of state land. SB 281 corrects the defects in the borough formation process that resulted in such a small land entitlement for the City and Borough of Yakutat by increasing its entitlement to 21,500 acres. The resources committee version of the bill reduced the additional entitlement to 8,552 acres. The bill also extends the authority of the Director of the Division of Lands in the Department of Natural Resources to condition and restrict any of the municipality's selections made under this increased grant.

STATUTORY AWARD OF MUNICIPAL ENTITLEMENT LANDS  
TO CITY AND BOROUGH OF YAKUTAT

A.S. 29.65.129 states that it is the policy of the State of Alaska to provide newly formed municipalities, including boroughs, with a general grant land entitlement of no less than ten percent (10%) of vacant, unappropriated, unreserved ("VUU") land located within their boundaries. This land grant is seen as both an incentive to borough formation and as an asset base to further the ongoing viability of the new municipal government. All Alaskan boroughs have received substantial entitlement acreages, either via a statutory grant of a specified number of acres under A.S. 29.65.010, or by a grant of ten percent (10%) of the total VUU land within the borough boundaries, under A.S. 29.65.030.

Unlike all other Alaskan boroughs<sup>1</sup>, the City and Borough of Yakutat ("CBY") has been nearly completely denied municipal entitlement land following its 1992 incorporation; it received only 138 acres. This is because the boundaries of the CBY initially approved by the Local Boundary Commission excluded the western area sought by Yakutat, resulting in almost complete exclusion of a VUU land base upon which the ten percent (10%) entitlement is calculated. This error was corrected by the Local Boundary Commission when it approved a 1996 annexation of the western area. However, because of technical language in the entitlement statutes, the ten percent (10%) entitlement calculation could only be made at the time of the initial incorporation of the CBY, when the boundaries included virtually no VUU land.

The current bill would correct this mistake, and grant the CBY nearly as much acreage as it would have received had its present boundaries been approved at initial incorporation in 1992. At that time, the ten percent (10%) calculation would have resulted in approximately 33,000 acres in entitlement grants to the Borough. The CBY now seeks a statutory award of 30,000 acres of entitlement land. Specific statutory entitlement awards have been made to twelve other boroughs, most recently the Lake and Peninsula Borough, which was granted 125,000 in the 1994 session. The amount of acreage per capita granted to the Lake and Peninsula Borough is substantially greater than that now sought by the Yakutat Borough.

The proposed legislation addresses one other matter. Because much of the state land in the area has been reclassified under the Yakataga Area Plan since 1992, it will be necessary for DNR to locate and reclassify acreage available for conveyance to the Borough. While DNR is generally supportive of a statutory award of entitlement lands to the borough, it is concerned that it may not be able to fulfill the requested acreage without the ability to

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<sup>1</sup>Examples are: Northwest Arctic Borough - 285,438 acres; Kenai Peninsula Borough - 135,780 acres; Matanuska-Susitna Borough - 355,210 acres; Lake and Peninsula Borough - 125,000 acres; and Denali Borough - 49,789 acres.

21,500  
8,552

place conditions upon certain acreages being conveyed. The general municipal entitlement statutes provide for unconditional conveyance, which, because of concerns of the Department of Fish & Game and others, limits the ability of DNR to convey much of the acreage sought. If the Borough had the ability to agree to such conditions in order to obtain conveyance of particular parcels, this would facilitate DNR's ability to grant the total acreage sought. Because of the lack of present surveying, smaller areas of Department of Fish & Game habitat concerns affect and jeopardize the ability of DNR to convey much larger areas which do not feature such concerns. The language of the bill which authorizes DNR to attach conditions agreed upon the CBY will facilitate DNR's ability to convey the total acreages requested by the CBY.

Concerns of various parties regarding any specific parcel would be addressed by DNR in determining whether it is in the State's best interest to grant a particular conveyance requested by the Borough, after the legislation becomes law.

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 25526  
JUNEAU, ALASKA 99802-5526  
PHONE: (907) 465-4100  
FACSIMILE: (907) 465-2332

March 12, 1998

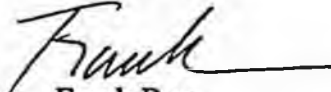
The Honorable Jerry Mackie  
Alaska State Legislature  
State Capitol, Room 427  
Juneau, AK 99801-1182

Dear Senator Mackie:

The Alaska Department of Fish and Game worked with the community of Yakutat over the past three months regarding their interest in obtaining statutory municipal entitlements in lieu of the entitlements that were not available to the Borough upon its initial incorporation in 1992. The enclosed letter of February 24 from Mr. James Brennan documents the progress made to date and the commitments made by the City and Borough of Yakutat regarding their management intent for certain potential entitlement parcels.

I am pleased to endorse SB 281 given the enclosed letter of commitment from the City and Borough of Yakutat and the provision in the bill which empowers the Department of Natural Resources to prescribe land use stipulations, conditions or covenants to certain parcels.

Sincerely,



Frank Rue  
Commissioner

cc: Janet Kowalski, ADF&G, Habitat & Restoration  
Lana Shea Flanders, ADF&G, Habitat & Restoration, Douglas  
Bob Clasby, ADF&G, Commercial Fisheries  
Kevin Delaney, ADF&G, Sport Fish  
Wayne Regelin, ADF&G, Wildlife Conservation  
Mary Pete, ADF&G, Subsistence  
Geron Bruce, ADF&G, CO

Enclosure

LAW OFFICES

HEDLAND, BRENNAN, HEIDEMAN & COOKE  
A PROFESSIONAL CORPORATION

ANCHORAGE:

JOHN S. HEDLAND  
JAMES T. BRENNAN  
SARA E. HEIDEMAN  
ERIC J. BROWN  
AMY L. VAUDREUIL  
PATRICK M. ANDERSON

1227 WEST NINTH AVENUE, SUITE 300  
ANCHORAGE, ALASKA 99501-3218  
TELEPHONE (907) 279-5528  
TELEFAX (907) 278-0877

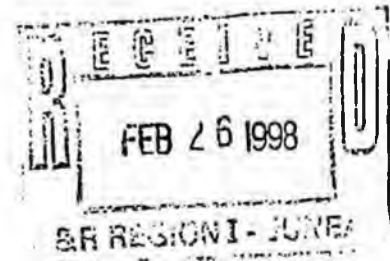
BETHEL OFFICE:

251 SEVENTH AVENUE  
P. O. BOX 555  
BETHEL, ALASKA 99559  
(907) 543-2744

BETHEL:

CHRISTOPHER R. COOKE  
JIM J. VALCARCE

February 24, 1998



Via Facsimile (907) 465-2332  
Frank Rue, Commissioner  
Department of Fish & Game  
P.O. Box 25526  
Juneau, AK 99811-5526

Re: SB 281; City and Borough of Yakutat Municipal  
Entitlements Bill

Dear Commissioner Rue:

I have been assisting the City and Borough of Yakutat (CBY) in obtaining statutory municipal entitlements in lieu of those which were not available to the Borough upon its initial incorporation in 1992. As you are probably aware, the CBY received almost no land entitlements upon incorporation, because nearly all the state VUU land in the region was located between Icy Bay and Cape Suckling, which only became a part of the Borough upon its annexation in 1996.

Borough representatives, including myself, have had discussions and exchanged correspondence with Lana Shea Flanders and Bill Hanson, of the Southeast Regional Habitat and Restoration Office. As a result of these discussions, we were able to insert into the language of the Bill a provision that empowers DNR to prescribe stipulations, conditions, or covenants, agreeable to the CBY, which could accompany approval of conveyance and patent to a specific parcel to be conveyed as an entitlement. This addition to the law will permit DNR to address habitat concerns through conditions or covenants, which concerns might otherwise foreclose conveyance of sensitive areas and the areas around them. As you know, CBY has demonstrated a commitment to habitat concerns in this region, and has generally been supportive of protective measures.

In discussing habitat protection concerns in the context of the pending SB 281, Yakutat has made the following commitments to ADF&G Habitat Division, and Bill Hanson asked that we reiterate these in a letter to yourself. Some of these are of lesser importance now because, since the time we made the commitments on behalf of the CBY, the Borough has agreed to reduce the SB 281

entitlement from 30,000 acres to 21,500 acres, which reduction occurred by amendment in the Senate C&RA Committee hearing on February 23. The purpose of this reduction was to remove Cape Suckling areas classified as forestry from the areas Yakutat intends to seek. The only area currently classified as forestry which will be sought by CBY is the area surrounding the sort yard in west Icy Bay, subunit 4a1 and a small part of subunit 4a2 under the Yakataga Area Plan designations. Despite the reduction in forestry lands sought, the commitments relating to them are reiterated herein.

CBY commits to the following, with regard to entitlement lands conveyed as a result of SB 281:

- (1) Any timberland conveyed to the CBY which lies west of the Duktoth River would be subject to the same riparian standards as would be applicable to forests on State land, under AS 14.17.113 and regulations thereunder.
- (2) Conveyance to the Borough of any lands between the Duktoth River and Cape Suckling would be subject to a moratorium on any timber harvest which will be identical with the remainder of the 20-year moratorium on state timber harvests in the region, as set forth in the December 2, 1994 Memorandum of Agreement (University settlement).
- (3) In sub-units 3a1, 3a2, and 3a3 (Tsiu to Duktoth coastal strip), habitat protection stipulations or conditions would attach to conveyance of the approximately 500-foot wide coastal fringe of timber discussed in the Area Plan, and of any associated ponds or marshlands identified by ADF&G as particularly important habitat.
- (4) Areas conveyed to the City and Borough of Yakutat in the Cape Suckling area should be managed to maintain fish and wildlife resources and uses as specified in the University settlement and the Yakataga Area Plan, as well as for recreational purposes. If, as was discussed with Ms. Flanders, offshore or onshore oil development on federal or state property were to occur in this region, it is conceivable that onshore support facilities might be sited on coastal selection lands in this area. In such eventuality, the Borough would seek to minimize impacts to fish and wildlife resources.
- (5) With regard to Ophir Creek, near the town of Yakutat, the CBY has engaged in cooperative stream restoration work as part of its salmon enhancement program. The CBY would be

Letter to Frank Rue, Commissioner  
re: SB281/City and Borough of Yakutat  
Page 3

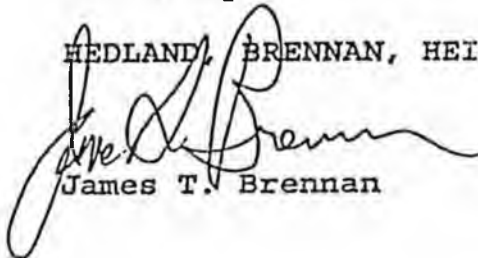
agreeable to a covenant attaching to Ophir Creek watershed parcels that specifies the following:

Both the active channel and 100-year floodplain of Ophir Creek require protection to retain functions and values of a permanent non-disturbed riparian buffer. A no-development greenbelt should extend from the edge of the floodplain the distance of the height of one site-potential tree. This greenbelt should be surveyed, platted, and recorded as a covenant on the deed.

The CBY again appreciates the attention and resources the Department has committed to habitat restoration in the Yakutat Borough region, and makes the foregoing commitments to further the mutual goals of the CBY and ADF&G.

Sincerely,

HEDLAND, BRENNAN, HEIDEMAN & COOKE



James T. Brennan

JTB/djl

cc: Jana Angvik, Director, Division of Lands (via fax and hard copy)  
Lana Shea Flanders, Regional Supervisor, SE Habitat and Restoration Division (via fax and hard copy  
465-4272)  
Tom Armour, Borough Manager (Via fax and hard copy)  
(g:\3000.5\rue0224.ltr)

# STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

HABITAT AND RESTORATION DIVISION

TONY KNOWLES, GOVERNOR

ISLAND CENTER BUILDING  
P.O. BOX 240020  
DOUGLAS, AK 99824-0020  
PHONE: (907) 465-4290  
FAX: (907) 465-4272

TO: Geron Bruce <sup>465-2332</sup>  
Legislative Liason  
Department of Fish & Game  
Juneau

DATE: February 23, 1998

FROM: Bill Hanson   
Habitat Biologist IV  
Douglas

SUBJECT: Yakutat Entitlement

I met with Paul Fuhs (lobbyist), Tom Armour (City Manager), Daryl James (Mayor) and Jim Brennan (attorney) for the City of Yakutat today.

They will prepare a new letter by tomorrow which reconfirms the commitments made in Mr. Brennan's letter of December 12, 1997 (see attached copy). They will add two additional commitments requested by Lana Shea Flanders in her memo of December 12, 1997 (see attached copy). The two additional commitments include a provision for protection of Ophir Creek and a commitment to honor the protections given to Fish and Wildlife resources under the University settlement and the Yakutaga Area Plan.

They indicated that they have significantly reduced their intent to select lands in the Cape Suckling Area. They do not intend to conduct timber harvest operations. They will manage for recreational development. They emphasized that ADF&G will have the opportunity to review specific land selections under DNR's review processes.

We specifically discussed possible selection of Unit 1a5 and other lands within the Kiklukh River corridor. I explained that I could not make any commitment regarding these lands, which have especially high values. I explained that ADF&G might or might not oppose selection of this area depending on specific values and their intent for development activities.

These discussions and commitments, which I have also discussed with Phil Mooney and Lana Shea Flanders, meet the concerns and conditions that we have previously expressed. This should clear the way for us to support the language and entitlement proposed in SB281 (copy attached). We do not have any position regarding the quantity of the entitlement.

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into between the Mental Health Trust Land Office (hereinafter "TLO") and the City and Borough of Yakutat (hereinafter "CBY") to summarize understandings reached by the parties' authorized representatives concerning Senate Bill No. 281, which would grant 21,500 acres of state lands to the CBY as municipal entitlements, and concerning the potential conveyance of certain state lands at West Icy Bay to the CBY in the event such or similar legislation is enacted.

In consideration of the mutual commitments and understandings stated herein, the TLO and CBY agree as follows:

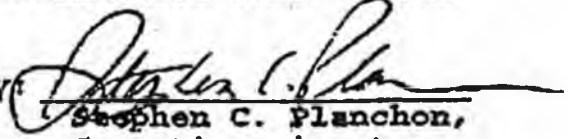
1. Neither the City and Borough of Yakutat ("CBY") or the Trust Land Office ("TLO") will relinquish their present or future rights to select and/or to take title to all or a portion of available State of Alaska ("State") land at West Icy Bay (the "State Tract"). The TLO has selected Sections 19, 20, 29 and 30, T. 22 S., R. 91 E, C.M. The CBY intends to select Sections 19, 20, 21, 22, 29, 30 and 31, T. 22, S., R. 91 E, C.M.
2. The TLO will support the current version of SB 281 or an amended version of the bill if the amendments do not unreasonably affect the Alaska Mental Health Trust (the "Trust").
3. In the event that all or a portion of the State Tract is conveyed to the CBY, the deed(s) will be subject to: (a) valid existing rights; (b) a perpetual public right-of-way reserved to the State, allowing for public access to the bay; (c) use restrictions that are consistent with the CBY zoning designation of "commercial waterfront"; (d) a covenant to not allow uses, or use terms and conditions, that unreasonably interfere with the

management and development of Trust lands in the area; and (e) a covenant to limit use fees chargeable to Trust-related activities to a reasonable fee of no less than the CBY's administrative fees and no greater than ten percent (10%) of the appraised value of the area being used, where a higher fee would unreasonably interfere with the management and development of Trust lands in the area.

- 4. The CBY will not object to expansion of the state-permitted TLO timber related activities on and across the State Tract prior to the time that the CBY may take title to all or a portion of the State Tract.
- 5. This MOU has been drafted through the efforts of both parties hereto. Accordingly, the rule of construction that ambiguities in an agreement are to be construed against the drafter has no application to this MOU.

STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES MENTAL HEALTH TRUST LAND OFFICE

Dated: March 27, 1998

By:   
Stephen C. Planchon,  
Executive Director

CITY AND BOROUGH OF YAKUTAT

Dated: 8 April, 1998

By:   
Daryl R. James  
Mayor

(g:\1000.5\moa0327)

**SB**

**284**



**SENATOR DAVE DONLEY**  
ALASKA STATE LEGISLATURE

**MEMORANDUM**

To: Senator Tim Kelly, Chair  
Senate Rules Committee

From: Senator Dave Donley *DD*

Date: March 23, 1998

Re: Hearing Request for CS SB 284 (STA) - "An Act relating to animal cruelty"

I respectfully request that the CS SB 284 be scheduled for floor calendaring at your earliest convenience. CS SB 284 will improve current statutory language in order to enable prosecutors to convict those that have participated in obvious acts of neglect and cruelty against animals. This legislation was offered in response to numerous animal cruelty cases in Alaska that have gone un-prosecuted because of the current wording in the statute addressing this issue. CS SB 284 passed the Senate Judiciary Committee with Senators Taylor and Pearce signing do pass and Senator Parnell signing no recommendation.

CS SB 284 is supported by Mush With Pride, the State Farm Bureau, the Alaska Livestock Producers Cooperative, the Alaska Animal Control Association, Alaska Society for the Prevention of Cruelty to Animals, Iditarod Race winner Libby Riddles, Mush With Pride, Fairbanks Animal Control, Kenai Animal Control, Friends of Pets, and the Gastineau Humane Society.

DD/ljh

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595  
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648

*MEMBER:* Senate Finance Committee • Legislative Budget & Audit Committee  
• Senate Community & Regional Affairs Committee

Produced in House



# SENATOR DAVE DONLEY

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## ALASKA STATE LEGISLATURE

### Sponsor Statement for CSSB 284 (STA) "An Act relating to cruelty to animals"

CS SB 284 was introduced in response to concerns about the treatment of animals and the difficulty of prosecuting cases which involve animal cruelty.

There have been numerous incidents of animal cruelty and neglect in Alaska which have gone un-prosecuted because of the current statutory language. One district attorney testified that the language, which reads, "intentionally inflicts severe and prolonged physical pain or suffering on an animal", is "un-prosecutable". CS SB 284 gives the state a more workable statute. The following outlines the changes the bill would make.

- ❖ Changes "intentionally" to "knowingly" which lowers the state of mind the state must prove in prosecuting an animal cruelty case. This would help in cases of starving animals. An owner's actions may not have been "intentional", but a reasonable person would "know" that lack of food causes starvation.
- ❖ Changes "recklessly" to "with criminal negligence" which lowers the criminal standard. Recklessness is indicated by an awareness and conscious disregard. Criminal negligence is indicated by a "failure to perceive a substantial and unjustifiable risk that the result will occur..." AS 11.81.900.
- ❖ Adds "animal husbandry" to existing statute as an accepted practice and a defense to the prosecution.
- ❖ Does not affect existing statute which protects farmers, ranchers, hunters and trappers who are conducting accepted veterinary practices including castration, de-horning, branding, euthanizing, etc. AS 11.61.140
- ❖ Does not affect the existing statute which designates cruelty to animals as a class A misdemeanor.

Supporters of this bill include: Mush With Pride, the Alaska Farm Bureau, the Alaska Livestock Producers Cooperative, the Alaska Animal Control Association, Alaska Society for the Prevention of Cruelty to Animals, Iditarod Race Winner Libby Riddles, Fairbanks Animal Control, Kenai Animal Control, Friends of Pets, and the Gastineau Humane Society.

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MEMBER: Senate Finance Committee • Legislative Budget & Audit Committee  
• Senate Community & Regional Affairs Committee



# Mush with PRIDE

Providing Responsible Information on a Dog's Environment

David Monson, President Mush with PRIDE  
P.O. Box 60249  
Fairbanks, AK 99706

Sen. Dave Donely  
State Capitol  
Juneau, AK 99801

March 18, 1998

RE: SB-284 ANIMAL CRUELTY BILL

Dear Sen. Donely,

Thank you for your continuing efforts to strengthen Alaska's animal cruelty laws. We believe that the lowering of the criminal standard for prosecution of cruelty to animals is a necessary step in protecting Alaska's domestic animals from negligent owners.

Sleddog medicine has become a specialty within the veterinary profession. Veterinary members of the International Sled Dog Veterinary Medical Association (an internationally recognized professional organization), as well as most veterinarians in the Alaska Veterinary Medical Association are well aware of the conditions and standards used in assessing care and well-being of sleddogs. In addition, Mush with PRIDE has issued Sleddog Care Guidelines which set standards for most common sleddog practices. These PRIDE standards, which have been endorsed by all major Alaskan racing organizations (Iditarod, Quest and ADMA) as well as most international sleddog racing groups (ISDRA and IFSS) were developed with constant input from several mushing veterinarians who are Directors of PRIDE. Therefore, we believe that the current statute does provide adequate protection against prosecution. We do not feel that any other musher-specific defense against prosecution is needed to protect mushers against prosecution.

We are hopeful that SB-284 will be passed this session so that state officials can better deal with the small minority of abusive owners who tarnish the image of our state and the official state sport of dogsledding.

Sincerely,

David Monson



# THE ALASKA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, INC.

SPCA State Headquarters and Spay Clinic • 849 W. International Airport Road • Anchorage, Alaska 99518  
Phone: 662-2999

March 2, 1998

To Whom It May Concern:

The Alaska Society for the Prevention of Cruelty to Animals, SPCA is in full support of SB 284. Efforts in past cruelty cases have been next to nothing. Alaska needs to have a stronger law to support our justice system in prosecution of animal abusers. The SPCA in past years, has witnessed animal abusers in the worst scenarios. Due to insufficient laws, the District Attorney's office was unable to penalize these people. Animal abuse is and has been occurring throughout the state. Most people are unaware of the severity of some of these cases. Public awareness is increasing and the state needs to update legislation to deal with cruelty offenders.

Statistics show that there is a definite link between animal cruelty and spousal, child abuse occurring within the home.

Again, the SPCA, as well as most of the general public, are in strong support of SB 284, and show a very strong interest in the passage of this bill.

Sincerely,

Ethel Christensen, Director

Diane Zarfoss

John McLaughlin

Diane Vuckovich

Lori Cornett

"Kindness Uplifts The World"



# FAIRBANKS NORTH STAR BOROUGH

2408 Davis Road P.O. Box 71267 \*Fairbanks, Alaska 99707-0267

Department of Direct Services  
Division of Animal Control

(907) 459-1451 \*FAX (907) 459-1120

March 13, 1998

The Honorable Dave Donley  
Alaska State Capitol, Room 508  
Juneau, AK 99801

Dear Senator,

I support passage of CSSB 284, an act relating to cruelty to animals.

The proposed changes create a more useful tool for investigators and prosecutors of cruelty to animals cases than the current language. It has long been known that under the current statute the only good evidence to prove the crime of cruelty to animals is a dead animal. The proposed changes will give enforcement officers the ability to intervene and hopefully save animals before they die or suffer severe injury due to inhumane treatment.

With the strong connection between cruelty to animals and abuse of children and other humans it is essential that we take cruelty to animals very seriously. Recognition, intervention and effective prosecution of cruelty to animals cases may help prevent the cycle of abuse from continuing in Alaskan families. Cruelty to animals cannot be tolerated, and an enforceable law is the first step in addressing the problem. Thank you.

Sincerely,

Laura Hood, Manager  
Division of Animal Control



7705 GLACIER HWY.

JUNEAU, ALASKA 99801

(907) 789-0260

FAX (907) 789-1795

February 26, 1998

Senator Dave Donley  
State Capitol Building  
Juneau, Alaska 99801

Senator Dave Donley:

On behalf of the Gastineau Humane Society we would like to go on record as being in support of Senate Bill 284. The statutory language currently in AS 11.61.140 is very difficult to prove and courts have been unable to prosecute a number of neglect and cruelty cases. Bill 284 will improve the language in AS 11.61.140 and enable prosecutors to convict those that have participated in obvious acts of neglect and cruelty.

Currently both the Humane Society of the United States and American Humane have initiated campaigns, "First Strike Animal Cruelty / Human Violence" and "Campaign Against Violence", this year to increase the awareness and alert all agencies involved in addressing issues of child abuse and neglect that there is a high correlation between animal abusers and child abusers. If the animal abuser can be prosecuted under AS 11.61.140 this could be a tool not only to prevent further animal cruelty but also provide opportunity for intervention in cases where children are also victims.

If there is anything I can do to facilitate passage of Bill 284 please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Linda M. Bleggen".

Linda M. Bleggen  
Executive Director

**SB**

**285**



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### SPONSOR STATEMENT

#### **SB 285: Procurement Practices for the Alaska Railroad**

When Alaska highway improvements are needed, a project is designed, an advertisement for bids occur, and a construction contract is competitively awarded for the construction. When the highway that is being improved crosses a railroad track, the work that is involved for a railroad crossing or overpass is defined with technical requirements and the construction work is included in the contract for the total highway improvement project.

When the situation described above occurs, the Alaska Railroad has input into the technical and financial requirements. The Department of Transportation negotiates a force account contract with the Alaska Railroad and their needs are satisfied. This arrangement results in the following:

- reduces the amount of work that private contractors have available to perform
- removes tax dollar expenditures from a competitive bid arrangement
- allows the Alaska Railroad to define how a portion of their tracks that interface with a highway improvement project can be improved at taxpayer expense.
- allows the Alaska Railroad to define how much the railroad portion of a highway improvement project should cost.
- and gives the Alaska Railroad the taxpayers funds to provide the improvements.

SB 285 will establish a fair and effective manner to award construction contracts for projects that cross the railroad. This bill will require the Alaska Railroad to utilize a competitive bidding process that is openly advertised.

**SB**

**297**



Official Business

# Alaska State Legislature

## Senate

State Capitol  
Juneau, AK. 99801-1182

### Rules Committee MEMORANDUM.

TO: Senator Kelly, Chairman  
Senate Rules Committee

FROM: Benjamin Brown, <sup>SES.</sup> Legislative Aide

DATE: 6 May 1998

IN RE: sectional analysis of the revised Rules CS for SB 297  
(version 0-LS1530\Kp)

*"An Act relating to breast-feeding."*

This memo is a summary of the revised Senate Rules Committee Substitute for SB 297. Please note that a sectional analysis is not generally considered to be the most authoritative interpretation of a bill; a bill itself is the best statement of its specific effects.

**SECTION 1: LEGISLATIVE FINDINGS** This section sets forth the general findings which provide the rationale for legislative action regarding breast-feeding. The list of findings has been abbreviated by the removal of six provisions.

**SECTION 2: AS 01.10.060(b) EXEMPTION FROM GENERAL DEFINITION OF LEWDNESS** This section adds a new subsection to the definitions that apply to all laws of the State unless the context requires otherwise. It specifies that several generally-defined terms do not refer to breast-feeding activity. It prohibits misconstrual of this definition as a means of permitting indecent viewing or photography under AS 11.61.123.

**SECTION 3: AS 29.10.200(21) LIMITATION OF HOME RULE POWERS** This section adds a reference to AS 29.25.080, created by Section

4 of the bill, to the list of provisions in Title 29 that curtail legal action by municipalities.

**SECTION 4: AS 29.25.080 RESTRICTION ON MUNICIPAL ORDINANCES REGARDING BREAST-FEEDING** This section adds a new section to the Home Rule Municipalities chapter of Title 29 which prevents enactment of an ordinance restricting breast-feeding activity. It prohibits definitions of 'lewdness' and 'immorality' in municipal ordinance from including breast-feeding. It prohibits misconstrual of this section as a means of permitting indecent viewing or photography under AS 11.61.123.

**SECTION 5: AS 44.83.990(4) DEFINITION OF PERSON** This section makes a relettering change to a reference to the definitions that apply to all laws of the State unless the context requires otherwise, in the definition of 'person' in the Alaska Energy Authority's enabling statute, AS 44.83.990(4).

0-LS1530VH  
Lauterbach  
4/28/98

*adopted*  
*5-1-98*

*recinded*  
*5-6-98*

CS FOR SENATE BILL NO. 297(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATOR ELLIS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to breast-feeding."

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

3 \* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

4 (1) the medical profession in the United States recommends that children from  
5 birth to the age of one year should be breast-fed unless, under particular circumstances, it is  
6 medically inadvisable;

7 (2) in addition to the benefit of improving bonding between mothers and their  
8 babies, breast-feeding offers better nutrition, digestion, and immunity for babies than does  
9 formula-feeding, and it may increase the intelligence quotient of a child;

10 (3) babies who are breast-fed have lower rates of death, meningitis, childhood  
11 leukemia and other cancers, diabetes, respiratory illnesses, bacterial and viral infections,  
12 diarrheal diseases, otitis media, allergies, obesity, and developmental delays; and

13 (4) any promotion of family values should encourage public acceptance of this  
14 most basic act of nurture between a mother and her baby, and a mother should not be made  
15 to feel incriminated or socially ostracized for breast-feeding her child.

1 \* Sec. 2. AS 01.10.060 is amended by adding a new subsection to read:

2 (b) In the laws of the state, "lewd conduct," "lewd touching," "immoral  
3 conduct," "indecent conduct," and similar terms do not include the act of a woman  
4 breast-feeding a child in a public or private location where the woman and child are  
5 otherwise authorized to be. Nothing in this subsection may be construed to authorize  
6 an act that is an offense under AS 11.61.123.

7 \* Sec. 3. AS 44.83.990(4) is amended to read:

8 (4) "person" includes a public agency in addition to the entities set out  
9 in AS 01.10.060(a)(8) [AS 01.10.060(8)];

0-LS1530F  
Lauterbach  
4/22/98

*not  
considered*

**CS FOR SENATE BILL NO. 297(RLS)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE SENATE RULES COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATOR ELLIS**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to breast-feeding."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **\* Section 1. LEGISLATIVE FINDINGS.** The legislature finds that

4 (1) the medical profession in the United States recommends that children from  
5 birth to the age of one year should be breast-fed unless, under particular circumstances, it is  
6 medically inadvisable;

7 (2) despite the recommendation of the medical profession, statistics reveal a  
8 declining percentage of mothers who are choosing to breast-feed their babies;

9 (3) many new mothers are now choosing to use formula rather than to breast-  
10 feed even before they leave the hospital, and only a small percentage of all mothers are still  
11 breast-feeding when their babies are six months old;

12 (4) in addition to the benefit of improving bonding between mothers and their  
13 babies, breast-feeding offers better nutrition, digestion, and immunity for babies than does  
14 formula-feeding, and it may increase the intelligence quotient of a child;

15 (5) babies who are breast-fed have lower rates of death, meningitis, childhood

1 leukemia and other cancers, diabetes, respiratory illnesses, bacterial and viral infections,  
2 diarrheal diseases, otitis media, allergies, obesity, and developmental delays;

3 (6) breast-feeding also provides significant benefits to the health of the mother,  
4 including protection against breast cancer and other cancers, osteoporosis, and infections of  
5 the urinary tract;

6 (7) the incidence of breast cancer in the United States might be reduced by 25  
7 percent if every woman breast-fed all her children until they reached the age of two years;

8 (8) the World Health Organization and the United Nations Children's Fund  
9 have established as one of their major goals for the decade the encouragement of breast-  
10 feeding;

11 (9) the social constraints of modern society weigh against the choice of breast-  
12 feeding and lead new mothers with demanding time schedules to choose formula-feeding to  
13 avoid embarrassment, social ostracism, or criminal prosecution; and

14 (10) any promotion of family values should encourage public acceptance of  
15 this most basic act of nurture between a mother and her baby, and a mother should not be  
16 made to feel incriminated or socially ostracized for breast-feeding her child.

17 \* **Sec. 2.** AS 01.10.060 is amended by adding a new subsection to read:

18 (b) In the laws of the state, "lewd conduct," "lewd touching," "immoral  
19 conduct," "indecent conduct," and similar terms do not include the act of a woman  
20 breast-feeding a child in a public or private location where the woman and child are  
21 otherwise authorized to be. Nothing in this subsection may be construed to authorize  
22 an act that is an offense under AS 11.61.123.

23 \* **Sec. 3.** AS 44.83.990(4) is amended to read:

24 (4) "person" includes a public agency in addition to the entities set out  
25 in AS 01.10.060(a)(8) [AS 01.10.060(8)];



## OFFICE OF SENATOR TIM KELLY

ALASKA STATE CAPITOL  
ROOM 101  
JUNEAU, ALASKA 99801  
(907)465-3822  
FAX (907)465-3756

### TELEFAX MESSAGE

TOTAL NUMBER OF PAGES 6, INCLUDING THIS PAGE

DATE: TUE. 4-21

TO: TERRY LAUTERBACH

FAX#: \_\_\_\_\_

VOICE#: \_\_\_\_\_

FROM: TIM BENINTENDI

SUBJECT: SB 297

Terry - May we get a RLS c.s. which  
deletes Sections 1, 4, 5, 6 & 7?

Also, on page 2, line 23, put  
a period after "be," and delete  
the words "irrespective → feeding."

Thanks, Tim B. 3770

\*\*\*\* Confidentiality Notice \*\*\*\*

This facsimile from the Office of Senator Tim Kelly, and any accompanying documents contain information intended only for the use of the individual or entity named on this cover sheet. The information may be confidential or legally privileged. If you are not the intended recipient, you are hereby notified that except for providing the information to the intended recipient, any disclosure, copying, distribution, or the taking of any action in reliance upon the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please notify us by telephone immediately so that we can arrange for the return of the original document to us.

TERRY LAUTERBACH

CS FOR SENATE BILL NO. 297(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/2/98  
Referred: Finance

Sponsor(s): SENATOR ELLIS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to breast-feeding."

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

3 ~~delete~~ \* Section 1. This Act may be known as the Breast-feeding Promotion and Protection Act  
4 of 1998.

5 \* Sec. 2. LEGISLATIVE FINDINGS. The legislature finds that

6 (1) the medical profession in the United States recommends that children from  
7 birth to the age of one year should be breast-fed unless, under particular circumstances, it is  
8 medically inadvisable;

9 (2) despite the recommendation of the medical profession, statistics reveal a  
10 declining percentage of mothers who are choosing to breast-feed their babies;

11 (3) many new mothers are now choosing to use formula rather than to breast-  
12 feed even before they leave the hospital, and only a small percentage of all mothers are still  
13 breast-feeding when their babies are six months old;

14 (4) in addition to the benefit of improving bonding between mothers and their  
15 babies, breast-feeding offers better nutrition, digestion, and immunity for babies than does

1 formula-feeding, and it may increase the intelligence quotient of a child;

2 (5) babies who are breast-fed have lower rates of death, meningitis, childhood  
3 leukemia and other cancers, diabetes, respiratory illnesses, bacterial and viral infections,  
4 diarrheal diseases, otitis media, allergies, obesity, and developmental delays;

5 (6) breast-feeding also provides significant benefits to the health of the mother,  
6 including protection against breast cancer and other cancers, osteoporosis, and infections of  
7 the urinary tract;

8 (7) the incidence of breast cancer in the United States might be reduced by 25  
9 percent if every woman breast-fed all her children until they reached the age of two years;

10 (8) the World Health Organization and the United Nations Children's Fund  
11 have established as one of their major goals for the decade the encouragement of breast-  
12 feeding;

13 (9) the social constraints of modern society weigh against the choice of breast-  
14 feeding and lead new mothers with demanding time schedules to choose formula-feeding to  
15 avoid embarrassment, social ostracism, or criminal prosecution; and

16 (10) any promotion of family values should encourage public acceptance of  
17 this most basic act of nurture between a mother and her baby, and a mother should not be  
18 made to feel incriminated or socially ostracized for breast-feeding her child.

19 \* Sec. 3. AS 01.10.060(b) is amended by adding a new subsection to read:

20 (b) In the laws of the state, "lewd conduct," "lewd touching," "immoral  
21 conduct," "indecent conduct," and similar terms do not include the act of a woman  
22 breast-feeding a child in a public or private location where the woman and child are  
23 otherwise authorized to be, ~~irrespective of whether the nipple of the woman's breast~~  
24 ~~is uncovered during or incidental to the breast feeding~~ Nothing in this subsection may  
25 be construed to authorize an act that is an offense under AS 11.61.123.

26 \* Sec. 4. AS 11.76 is amended by adding a new section to read:

27 *delete* **Sec. 11.76.150. Interference with the right to breast-feed.** (a) A person  
28 commits the offense of interference with the right of a woman to breast-feed a child  
29 if the person intentionally prevents or restricts a woman from breast-feeding a child  
30 in a common carrier, place of public accommodation, or other place to which the  
31 general public is invited and where the woman and child are otherwise authorized to

1 be present, irrespective of whether the nipple of the woman's breast is uncovered  
2 during or incidental to the breast feeding.

3 (b) Interference with the right of a woman to breast-feed a child is a violation.

4 \* Sec. 5. AS 29.10.200 is amended to read:

5 ~~delete~~ **Sec. 29.10.200. Limitation of home rule powers.** Only the following  
6 provisions of this title apply to home rule municipalities as prohibitions on acting  
7 otherwise than as provided. These provisions supersede existing and prohibit future  
8 home rule enactments that provide otherwise:

- 9 (1) AS 29.05.140 (transition);
- 10 (2) AS 29.06.010 (change of municipal name);
- 11 (3) AS 29.06.040 - 29.06.060 (annexation and detachment);
- 12 (4) AS 29.06.090 - 29.06.170 (merger and consolidation);
- 13 (5) AS 29.06.190 - 29.06.420 (unification of municipalities);
- 14 (6) AS 29.06.450 - 29.06.530 (dissolution);
- 15 (7) AS 29.10.100 (charter amendment);
- 16 (8) AS 29.20.010 (conflict of interest);
- 17 (9) AS 29.20.020 (meetings public);
- 18 (10) AS 29.20.050 (legislative power);
- 19 (11) AS 29.20.060 - 29.20.120 (assembly composition and  
20 apportionment);
- 21 (12) AS 29.20.140 (qualifications of members of governing bodies);
- 22 (13) AS 29.20.150 (term of office);
- 23 (14) AS 29.20.220 (executive power);
- 24 (15) AS 29.20.270(e) (ordinance veto by mayor);
- 25 (16) AS 29.20.630 (prohibited discrimination);
- 26 (17) AS 29.20.640 (reports);
- 27 (18) AS 29.25.010(a)(10) (municipal exemption on contractor bond  
28 requirements);
- 29 (19) AS 29.25.050 (codification);
- 30 (20) AS 29.25.060 (resolutions);
- 31 (21) AS 29.25.080 (breast-feeding);

- 1                   (22) AS 29.26.030 (notice of elections);
- 2                   (23) [(22)] AS 29.26.050 (voter qualification);
- 3                   (24) [(23)] AS 29.26.250 - 29.26.360 (recall);
- 4                   (25) [(24)] AS 29.35.020 (extraterritorial jurisdiction);
- 5                   (26) [(25)] AS 29.35.030 (eminent domain);
- 6                   (27) [(26)] AS 29.35.050 (garbage and solid waste services);
- 7                   (28) [(27)] AS 29.35.055 (local air quality control program);
- 8                   (29) [(28)] AS 29.35.060 (franchises and permits);
- 9                   (30) [(29)] AS 29.35.070 (public utilities);
- 10                  (31) [(30)] AS 29.35.080 (alcoholic beverages);
- 11                  (32) [(31)] AS 29.35.120 (post audit);
- 12                  (33) [(32)] AS 29.35.131 (enhanced 911 system);
- 13                  (34) [(33)] AS 29.35.145 (regulation of firearms);
- 14                  (35) [(34)] AS 29.35.160 (education);
- 15                  (36) [(35)] AS 29.35.170(b) (assessment and collection of taxes);
- 16                  (37) [(36)] AS 29.35.180(b) (land use regulation);
- 17                  (38) [(37)] AS 29.35.250 (cities inside boroughs);
- 18                  (39) [(38)] AS 29.35.260 (cities outside boroughs);
- 19                  (40) [(39)] AS 29.35.340 (acquisition of areawide power);
- 20                  (41) [(40)] AS 29.35.500 - 29.35.590 (hazardous materials and wastes);
- 21                  (42) [(41)] AS 29.40.160(a) - (c) (title to vacated areas);
- 22                  (43) [(42)] AS 29.40.200 (subdivisions of state land);
- 23                  (44) [(43)] AS 29.45.010 - 29.45.570 (property taxes);
- 24                  (45) [(44)] AS 29.45.650(c), (d), (e), and (f) (sales and use tax);
- 25                  (46) [(45)] AS 29.45.700(d) (sales and use tax);
- 26                  (47) [(46)] AS 29.47.200(b) (security for bonds);
- 27                  (48) [(47)] AS 29.47.260 (construction);
- 28                  (49) [(48)] AS 29.47.470 (air carriers);
- 29                  (50) [(49)] AS 29.60.050(a) (limitation on computation and use of
- 30                  payment);
- 31                  (51) [(50)] AS 29.60.120(a) and (c) (priority revenue sharing for health

1 facilities and hospitals);

2 (52) [(51)] AS 29.65 (general grant land);

3 (53) [(52)] AS 29.71.040 (procurement preference for state agricultural  
4 and fisheries products);

5 (54) [(53)] AS 29.71.050 (procurement preference for recycled Alaska  
6 products).

7 \* Sec. 6. AS 29.25 is amended by adding a new section to read:

8 *delete* Sec. 29.25.080. Breast-feeding. A municipality may not enact an ordinance  
9 that prohibits or restricts a woman breast-feeding a child in a public or private location  
10 where the woman and child are otherwise authorized to be. In a municipal ordinance,  
11 "lewd conduct," "lewd touching," "immoral conduct," "indecent conduct," and similar  
12 terms do not include the act of a woman breast-feeding a child in a public or private  
13 location where the woman and child are otherwise authorized to be, irrespective of  
14 whether the nipple of the woman's breast is uncovered during or incidental to the  
15 breast feeding. Nothing in this section may be construed to authorize an act that is an  
16 offense under a municipal ordinance that establishes an offense with elements  
17 substantially equivalent to the elements of an offense under AS 11.61.123. This  
18 section is applicable to home rule and general law municipalities.

19 \* Sec. 7. AS 44.83.990(4) is amended to read:

20 *delete* (4) "person" includes a public agency in addition to the entities set out  
21 in AS 01.10.060(a)(8) [AS 01.10.060(8)];

Tuesday, April 21, 1998

WE FEEL STRONGLY THAT NURSING MOTHERS SHOULD NOT BE SUB-  
JECTED TO LAWS RELATING TO LEWD CONDUCT, INDECENT TOUCH-  
ING, IMMORAL CONDUCT, INDECENT CONDUCT, OR THE LIKE, UNDER  
ALASKA STATUTE. IN ADDITION, WE FEEL THAT IN THE ABSENCE  
OF ACTUAL SOCIAL DISTURBANCES OR THE FILING OF CHARGES  
AGAINST WOMEN WHO PUBLICLY BREAST-FEED THEIR INFANTS,  
THERE SHOULD BE NO LAWS MADE OR ABRIDGED TO IMPACT RIGHTS  
WHICH ALREADY EXIST.

# Alaska State Legislature



Official Business

State Capitol  
Juneau AK  
99801-1182

April 14, 1998

Senator Tim Kelly, Chair  
Senate Rules Committee  
State Capitol Building, Room 101  
Juneau, Alaska 99801

Dear Senator Kelly,

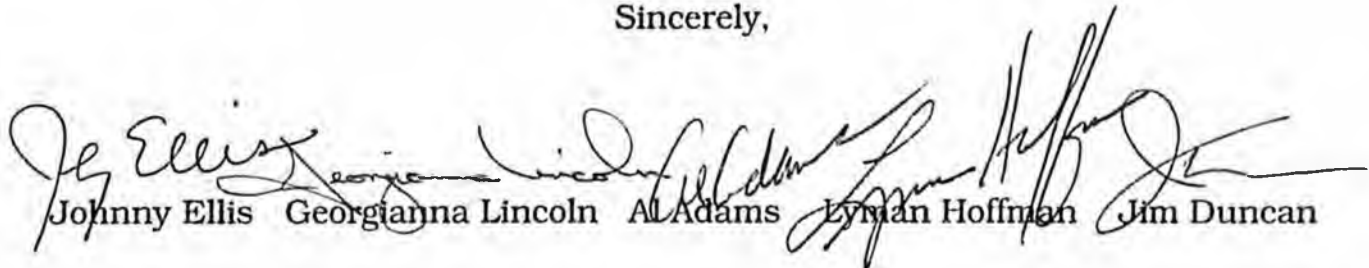
We are writing to request that you please consider scheduling Senate Bill 297, "The Breast-feeding Promotion and Protection Act" for a Senate floor vote at your earliest convenience.

Alaska law must be clear that mothers who breast-feed their babies in public will not be prosecuted under indecent exposure and lewd conduct laws. "The Breast-feeding Promotion and Protection Act" clarifies this protection. In addition, anyone that interferes with a mother's right to breast-feed her baby will be charged with a violation.

Mothers and health care workers from across Alaska have sent letters and public opinion messages endorsing The Breast-feeding Act. The Anchorage and Juneau chapters of the La Leche League International, the Alaska Nurses Association, South East Alaska Regional Health Consortium, Alaska Breast-feeding Coalition, and the Division of Public Health have also announced their support.

Again, we urge you to schedule this important bill for a floor vote as soon as possible. We would like this bill to have adequate time to get through the House before we adjourn. Thank you for your consideration.

Sincerely,

  
Johnny Ellis Georgianna Lincoln Al Adams Lyman Hoffman Jim Duncan

**SB**

**304**

0-LS0153\X  
Ford  
4/2/98

**CS FOR SENATE BILL NO. 304( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): SENATOR DONLEY**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the bail or fine for an offense committed in a highway work**  
2 **zone; and providing for an effective date."**

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

4 **\* Section 1.** AS 28.05.151 is amended by adding a new subsection to read:

5 (d) The supreme court, in establishing scheduled amounts of bail under this  
6 section, and each municipality that establishes or has established a fine schedule under  
7 this section shall provide that the scheduled amount of bail or fine, as applicable, for  
8 a motor vehicle or traffic offense that is committed in a highway work zone shall be  
9 double the amount of the bail or fine for the offense if it had not been committed in  
10 a highway work zone.

11 **\* Sec. 2.** AS 28.40 is amended by adding a new section to read:

12 **Sec. 28.40.070. Fines for offenses committed within highway work zones**  
13 **doubled.** Whenever a person violates a provision of this title or a regulation adopted  
14 under the authority of this title within a highway work zone, notwithstanding the

1 amount of the fine or the maximum fine set under this title, the fine, or maximum fine,  
2 is double the amount provided in this title.

3 \* Sec. 3. AS 28.40.100(a) is amended by adding a new paragraph to read:

4 (25) "highway work zone" means an area identified by advance signing  
5 where road construction, repair, or maintenance work is being done on or adjacent to  
6 a highway, whether or not work is actually being done at that time.

7 \* Sec. 4. This Act takes effect April 30, 1999.

CS FOR SENATE BILL NO. 304( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATOR DONLEY



A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the bail or fine for an offense committed in a highway work  
2 zone; relating to operating a motor vehicle in the left lane of a divided highway;  
3 and providing for an effective date."

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

5 \* Section 1. AS 28.05.151 is amended by adding a new subsection to read:

6 (d) The supreme court, in establishing scheduled amounts of bail under this  
7 section, and each municipality that establishes or has established a fine schedule under  
8 this section shall provide that the scheduled amount of bail or fine, as applicable, for  
9 a motor vehicle or traffic offense that is committed in a highway work zone shall be  
10 double the amount of the bail or fine for the offense if it had not been committed in  
11 a highway work zone.

12 \* Sec. 2. AS 28.35 is amended by adding a new section to read:

13 Sec. 28.35.165. Operation of vehicle on state highways or vehicular ways  
14 or areas. (a) A person operating a motor vehicle on a divided highway with at least

1 two traffic lanes on each side may not drive in the far left lane unless the person is  
2 overtaking another vehicle, the person is making a left turn from the divided highway,  
3 or traffic or road conditions require driving in the left lane.

4 (b) A person who violates this section is subject to a fine of up to \$50.

5 \* Sec. 3. AS 28.40 is amended by adding a new section to read:

6 **Sec. 28.40.070. Fines for offenses committed within highway work zones**  
7 **doubled.** Whenever a person violates a provision of this title or a regulation adopted  
8 under the authority of this title within a highway work zone, notwithstanding the  
9 amount of the fine or the maximum fine set under this title, the fine, or maximum fine,  
10 is double the amount provided in this title.

11 \* Sec. 4. AS 28.40.100(a) is amended by adding a new paragraph to read:

12 (25) "highway work zone" means an area identified by advance signing  
13 where road construction, repair, or maintenance work is being done on or adjacent to  
14 a highway, whether or not work is actually being done at that time.

15 \* Sec. 5. This Act takes effect June 30, 1999.

By DONLEY

WORK DRAFT

WORK DRAFT

WORK DRAFT

0-LS01581T

Ford

3/31/98

CS FOR SENATE BILL NO. 304( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATOR DONLEY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulation of highways and motor vehicles; and providing for  
2 an effective date."

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

4 \* Section 1. AS 28.05.151 is amended by adding a new subsection to read:

5 (d) The supreme court, in establishing scheduled amounts of bail under this  
6 section, and each municipality that establishes or has established a fine schedule under  
7 this section shall provide that the scheduled amount of bail or fine, as applicable, for  
8 a motor vehicle or traffic offense that is committed in a highway work zone shall be  
9 double the amount of the bail or fine for the offense if it had not been committed in  
10 a highway work zone.

11 \* Sec. 2. AS 28.35 is amended by adding a new section to read:

12 Sec. 28.35.165. Operation of vehicle on state highways or vehicular ways  
13 or areas. (a) A person operating a motor vehicle on a divided highway with at least  
14 two traffic lanes on each side may not drive in the far left lane unless

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education  
State of Alaska

*by DONLEY*

0-LS0151Y

Ford

3/31/98

**CS FOR SENATE BILL NO. 304( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**

**Referred:**

**Sponsor(s): SENATOR DONLEY**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to regulation of highways and motor vehicles; and providing for  
2 an effective date."

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

4 \* **Section 1.** AS 28.05.151 is amended by adding a new subsection to read:

5 (d) The supreme court, in establishing scheduled amounts of bail under this  
6 section, and each municipality that establishes or has established a fine schedule under  
7 this section shall provide that the scheduled amount of bail or fine, as applicable, for  
8 a motor vehicle or traffic offense that is committed in a highway work zone shall be  
9 double the amount of the bail or fine for the offense if it had not been committed in  
10 a highway work zone.

11 \* **Sec. 2.** AS 28.35 is amended by adding a new section to read:

12 **Sec. 28.35.165. Operation of vehicle on state highways or vehicular ways**  
13 **or areas.** (a) A person operating a motor vehicle on a divided highway with at least  
14 two traffic lanes on each side may not drive in the far left lane unless

- 1 (1) the person is overtaking another vehicle;  
2 (2) the person is making a left turn from the divided highway;  
3 (3) traffic or road conditions require driving in the left lane; or  
4 (4) the person is traveling at a speed greater than the traffic flow.

5 (b) A person who violates this section is subject to a fine of up to \$50.

6 \* Sec. 3. AS 28.40 is amended by adding a new section to read:

7 **Sec. 28.40.070. Fines for offenses committed within highway work zones**  
8 **doubled.** Whenever a person violates a provision of this title or a regulation adopted  
9 under the authority of this title within a highway work zone, notwithstanding the  
10 amount of the fine or the maximum fine set under this title, the fine, or maximum fine,  
11 is double the amount provided in this title.

12 \* Sec. 4. AS 28.40.100(a) is amended by adding a new paragraph to read:

13 (25) "highway work zone" means an area identified by advance signing  
14 where road construction, repair, or maintenance work is being done on or adjacent to  
15 a highway, whether or not work is actually being done at that time.

16 \* Sec. 5. This Act takes effect June 30, 1999.



# SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

## States with Laws Requiring Driving in the Right Lane on Divided Highways

### Oklahoma

For not Driving in the Right Lane When Proceeding at Less than the Normal Speed of Traffic:

1st offense - Not more than 10 days, \$10 to \$100

2nd offense (within 1 year) - Not more than 20 days, )-\$20 to \$200

3rd or subsequent offense (within 1 year) - Not more than 6 month, Not more than \$500.

### Oregon

Driving at Less Than the Normal Speed of Traffic and Not Driving in the Right Lane - Class B Traffic Infraction - Not more than \$300

### Wisconsin

Failing to Maintain Speed Except in Right Lane-\$30 to \$300

### Washington

on a multi-lane highway, failure to drive in the right lane except when traveling at a speed greater than the traffic flow. Washington Court Rule 6.2

### Virginia

A person, driving at less than the normal speed of traffic, shall drive in the lane nearest the right edge or right curb of the highway when such lane is available for travel. There is an exception to this requirement if the right lane of a particular highway has been reserved for slow-moving traffic. §46.2-804(1)

### Vermont

The following points have been assigned to speeding and speed related offenses: Violation of regulations governing speed on interstate highways-2 points; violation of basic speed rule and maximum speed limit-2 points; violation of slow moving vehicle law/driving at less than the normal speed of traffic and except in the right lane-2 points;

### Missouri

Driving at less than the normal speed of traffic and not driving in the right lane is an infraction.

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595  
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648

MEMBER: Senate Finance Committee • Legislative Budget & Audit Committee  
• Senate Community & Regional Affairs Committee

### Rhode Island

Violation Fine Schedule. The following administrative fines are assessed for certain speed law violations. Driving too slow (impeding traffic/not driving in the right lane when not driving at the normal speed of traffic)-\$30

### New York

Violating the Minimum Speed Law (including not driving in the right lane when proceeding at less than the normal speed of traffic) or Posted Minimum Speed Limit-1st offense-Not more than 15 days 2nd offense (within 18 months)-Not more than 45 days Subsequent offense (within 18 months)-Not more than 90 days

### Kansas

For not driving in the right-lane when proceeding at a speed less than the normal speed of traffic, the fine is \$20.

\* Four other states have "infractions" but they does not call for any fines and/or penalties.

**SB**

**306**



**SENATOR DAVE DONLEY**  
ALASKA STATE LEGISLATURE

**Sponsor Statement  
for CS Senate Bill 306  
"Tax Deductions for Custodial Parents"**

CS Senate Bill 306 would prohibit courts from unconditionally granting non-custodial parents a tax exemption for their child in a divorce, legal separation, dissolution, or annulment. This prevents a parent who is in arrears of child support from unfairly claiming an exemption for a child they are not supporting. Currently many custodial parents are being unfairly denied legitimate tax deductions because of a prior agreement in the child support order. Presently, federal law automatically grants the exemption to the custodial parent, which is determined by the actual amount of time that the parent has custody of the child.

This legislation does allow for the court to conditionally grant a tax exemption to the non-custodial parent for a tax year if the non-custodial parent is in compliance with federal law and also not in arrears of more than four months of their support payments or payment schedule of support payments. Four months is an existing standard for revocation of licenses used by the State Board of Licensing and is defined in AS 25.27.244q(6).

This legislation also requires the Child Support Enforcement Agency provide the payee with a document certifying that the payer was indeed in arrears under AS 25.27.244q(6).

This legislation only applies to future support orders and cannot be retroactive.

DD/ljh

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595  
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648

**MEMBER:** Senate Finance Committee • Legislative Budget & Audit Committee  
• Senate Community & Regional Affairs Committee

Produced in House

**SB**

**309**

# Alaska State Legislature

## Senate



**JERRY WARD**

State Capital  
Juneau, AK 99801-1182  
Phone (907) 465-4940  
Fax (907) 465-3766

716 W. 4th Ave., Ste. 410  
Anchorage, AK 99501-2133  
Phone (907) 258-8183  
Fax (907) 258-0820

145 Main Street Loop  
Kenai, AK 99611  
Phone (907) 283-7996  
Fax (907) 283-3075

### Sponsor Statement SB 309

“An Act relating to the use of force by peace officers and correctional officers.”

SB 309 will protect law enforcement officers from legal action when acting within their training and operational guidelines. The use of non-lethal munitions, such as rubber bullets and bean bag rounds, are an accepted method of rendering certain suspects harmless without doing long-term or permanent injury. A bean bag round or other non-lethal projectile is designed to serve as a far reaching baton which does not require the officer to get too close to a person who might want to harm themselves or others. However, accidents do happen. It is this unlikely accident that SB 309 addresses.

Under current law, a fully trained police officer acting within departmental guidelines could be held civilly liable for injuries resulting from the use of non-lethal projectiles. SB 309 would protect law enforcement officers and continue to allow police departments the full range of tools needed to protect the citizens of Alaska.

## Bullet stops suicide

### Beanbag draws bruise, not blood

By RACHEL D'ORO  
Daily News reporter

A woman sat on the steps outside of her Muldoon home Tuesday with a butcher knife in her hand.

Twenty feet away, Anchorage police crouched behind a mailbox, a parked car and a snow berm in case the woman charged them with the knife.

Sobbing, she told officers she wanted to hurt herself. She asked police to kill her. Then she pressed the knife to her wrist.

A member of the Crisis Intervention Response Team took aim and shot the woman in the thigh. But instead of a bullet, he fired a beanbag made from lead shot and canvas. The round, flat bullet shot out of a 37 mm tear-gas gun only bruised the woman. She dropped the knife and ended up in the hospital for psychiatric evaluation.

Anchorage police have joined a growing number of law enforcement agencies across the country to add beanbag ammunition to their cache of what are called "less-lethal" weapons. The idea of shooting beanbags is decades old but in the last few years has been refined to make them more accurate and easier to use.

The technology became part of the Anchorage arsenal two years ago, but CIRT officers use it very infrequently and, so far, only in certain cases of attempted suicide. Alaska State Troopers have never used the bullets, although they've had them on hand for a year.

"It's a very good intermediate tool for resolving a cri-

## BEANBAG: When a bullet isn't needed

Continued from Page A-1

sia," said CIRT supervisor Sgt. Ken Spadafora. "We would rather send someone home with a few bruises than have them kill themselves."

But beanbag bullets are not without controversy. Delivering the punch of a heavyweight boxer or a fastball, they have caused at least five deaths outside, including that of a suicidal Canadian man who died last year after Ottawa-Carleton police shot him with a beanbag from a 12-gauge shotgun. The beanbag struck him right above the heart, lodging in his chest.

Sometimes they don't work at all, especially when the targets are feeling no pain, either because they are seriously wounded or hyped-up on drugs, police agree.

The first time police in Springfield, Mo., used beanbag bullets four years ago, nine 12-gauge rounds failed to stop a frail, 72-year-old man who had already shot himself in the head, said Lt. Ron Hartman of the Springfield Police Department. Hartman trained Anchorage police in the proper technique two years ago and trains officers nationwide. The elderly man finally sat down, and an officer grabbed him while he was momentarily distracted, he said.

Beanbag mishaps are rare, and the bullets save more lives than not, authorities say. Misfires can happen when the bullets, which are packed inside shells, fail to properly unfold. Serious injury or death is possible if the bullets strike vulnerable body parts instead of large muscle masses like legs or abdomens, Hartman said.

"The bottom line is, they are important tools for preventing further deaths," he said. "Basically, it's like delivering a baton strike from a safe distance. Everybody's getting in on it."

Anchorage police have used beanbag bullets at least a dozen times since they got them, Spadafora said. In one case, a round broke a small bone of one suicidal person. All the others caused only bruises. As far as he's concerned, making too much of the risk factor is misleading.

"A baton can kill you if it hits you in the wrong place too many times," he said.

In the '60s, some police agencies used a crude and clumsy version of beanbag ammunition for riot and crowd control, said Larry Glick, executive director of the National Tactical Officers Association in Pennsylvania. The old-style beanbags were inaccurate, however, and fell from favor until the improved version came out in mid-1990s.

"They're a real hot item right now," said Glick, who added that about 3,000 officers a year are trained to use beanbags instead of bullets. "They're definitely a wave of the future."

Police have used the new beanbags for such a short time that no one yet keeps complete statistics, Glick said.

Hartman's colleague, Springfield Police Capt. Steve James, told the Ottawa Citizen newspaper last year, however, that four people had died from beanbags before the Ottawa death. And none of the beanbags in those earlier cases pierced the skin. For example, a Texas man died in 1994 after a beanbag struck him in the throat, said James, a leading authority on less-lethal weapons, who also helped train Anchorage CIRT officers.

Locally, police use two sizes of beanbag bullets, Spadafora said. The smaller, square bullets can be fired from 12-gauge shotguns while the larger, round ones are fired from 37 mm tear gas guns.

So far, only about 30 of the 325 officers in Anchorage have been trained in the use of beanbag ammunition. Eventually, all officers

### Non-lethal bullets



■ **Material:** Canvas and lead shot  
■ **Sizes:** 12-gauge shotgun and 37 mm tear-gas gun are the two sizes that Anchorage police use.

■ **12 gauge:**  
Surface: Two-inch square (pictured above upper right)

Weight: 40 grams or 1.4 ounces

Velocity: 300 feet per second

Operating range: 10 to 25 yards

Cost: \$5 per bullet

■ **37 mm:**

Surface: Three-inch diameter circle (pictured above lower left)

Weight: 150 grams or 5.2 ounces

Velocity: 180 feet per second

Cost: \$18-20 per bullet

■ **What happens:**

The bag is wrapped tightly into a shell and is shot out of a 12-gauge shotgun or a 37 mm tear-gas gun. As it moves toward the target, the bag unfolds. Upon impact, the bag collapses and conforms to the target. The lead shot acts as a fluid medium, distributing the energy over the whole surface.

■ **What can go wrong:**

The 12-gauge bag doesn't completely unfold until it reaches 25 yards.

If shot at close range, 30 or 40 feet away, the impact could cause serious injury or death.

Sources: Anchorage Police Department, The Oregonian

RON ENGSTROM / Anchorage Daily News

*Anchorage police have used beanbag bullets at least a dozen times since they got them, Sgt. Ken Spadafora said. In one case, a round broke a small bone of one suicidal person. All the others caused only bruises. As far as he's concerned, making too much of the risk factor is misleading.*

will be trained. But the new bullets will never supplant real guns or bullets, which always will be on hand as a back-up in every situation, Spadafora said.

"Beanbags are just another option," he said. "They're not replacing anything."

**SB**

**319**

0-LS1545F  
Bannister  
4/29/98

**CS FOR SENATE BILL NO. 319(RLS)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE SENATE RULES COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATOR PHILLIPS**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to arbitration; amending Rules 57(a) and 77(g), Alaska Rules  
2 of Civil Procedure; and providing for an effective date."

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

4 \* Section 1. AS 09.43.010 is amended to read:

5           **Sec. 09.43.010. Arbitration agreements valid [; APPLICATION OF**  
6           **ARTICLE]. A written agreement that is subject to and complies with**  
7           **AS 09.43.015, or that is not subject to AS 09.43.015,** to submit a [AN EXISTING]  
8           controversy existing at the time the agreement is entered into to arbitration, or a  
9           provision in a written agreement that is subject to and complies with AS 09.43.015,  
10           or that is not subject to AS 09.43.015, [CONTRACT] to submit to arbitration a  
11           [SUBSEQUENT] controversy between the parties occurring after the agreement is  
12           entered into is valid, enforceable, and irrevocable, except on [UPON] grounds that  
13           exist at law or in equity for the revocation of a contract. [HOWEVER, AS 09.43.010 -  
14           09.43.180 DO NOT APPLY TO A LABOR-MANAGEMENT CONTRACT UNLESS

1 INCORPORATED INTO THE CONTRACT BY REFERENCE OR THEIR  
2 APPLICATION IS PROVIDED FOR BY STATUTE.]

3 \* **Sec. 2.** AS 09.43 is amended by adding new sections to read:

4 **Sec. 09.43.013. Application to labor-management agreements.**

5 AS 09.43.010 - 09.43.180 do not apply to a labor-management agreement unless  
6 AS 09.43.010 - 09.43.180 are incorporated into the agreement by reference or their  
7 application is provided for by statute.

8 **Sec. 09.43.015. Arbitration agreement requirement.** (a) In order for an  
9 agreement to provide for arbitration, the agreement must contain a notice that states  
10 that a party has the option to compel arbitration and to bind the other party to the  
11 arbitration decision, and that arbitration limits the rights and remedies otherwise  
12 available under the law. The notice must also state that parties to an arbitration  
13 agreement do not waive their rights to obtain a judicial determination of whether a  
14 dispute is arbitrable. This notice must be typed in capital letters within the agreement  
15 or on a separate document. If an agreement fails to contain the notice required by this  
16 subsection, a party may not compel arbitration, an arbitration decision is not binding,  
17 and otherwise available rights and remedies are not limited.

18 (b) Language in substantially the following form satisfies the notice  
19 requirement of (a) of this section:

20 NOTICE: THIS CONTRACT INCLUDES AN ARBITRATION  
21 CLAUSE. IF YOU SIGN THIS CONTRACT, YOU CAN BE  
22 COMPELLED TO SUBMIT ANY DISPUTE UNDER THIS  
23 CONTRACT TO MANDATORY BINDING ARBITRATION.  
24 HOWEVER, BY SIGNING THIS CONTRACT, YOU DO NOT  
25 WAIVE YOUR RIGHT TO OBTAIN A JUDICIAL  
26 DETERMINATION OF WHETHER A PARTICULAR  
27 DISPUTE IS ARBITRABLE. BY SIGNING THIS  
28 CONTRACT WITH AN ARBITRATION CLAUSE, YOU  
29 WILL BE OR MAY BE LIMITING OR WAIVING YOUR  
30 RIGHTS TO

31 (1) HAVE A DISPUTE UNDER THE CONTRACT RESOLVED

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IN A COURT OF LAW, EVEN WHERE THE CONTRACT WITH THE ARBITRATION CLAUSE IS VOID OR VOIDABLE DUE TO REPUDIATION, RESCISSION, FRAUD, DURESS, MISTAKE, OR OTHER GROUNDS;

(2) APPEAL THE ARBITRATOR'S DECISION TO A COURT OF LAW;

(3) EXERCISE STATUTORY REMEDIES, SUCH AS A LIEN, INJUNCTION, OR CLAIM FOR DAMAGES;

(4) HAVE THE DISPUTE DECIDED BY A DECISION MAKER WITH APPROPRIATE TRAINING TO DECIDE THE DISPUTE;

(5) USE DISCOVERY AND OTHER EVIDENCE-GATHERING PROCEDURES OTHERWISE AVAILABLE IN AN ACTION BEFORE A COURT OF LAW;

(6) OBTAIN A DECISION CONSISTENT WITH THE LAW AND THE FACTS;

(7) OBTAIN A WRITTEN STATEMENT OF THE LEGAL AND FACTUAL BASES OF THE DECISION;

(8) RECOVER PUNITIVE DAMAGES IF THE PARTIES' CONTRACT OR ARBITRATION AGREEMENT EXPRESSLY EXCLUDES A RIGHT TO RECOVER PUNITIVE DAMAGES;

(9) RECOVER ATTORNEY FEES AND COSTS.

(c) In this section, "agreement" does not include an agreement to submit to arbitration a controversy between the parties occurring after the agreement is entered into, if the agreement

(1) relates to claims arising out of personal injury, whether based on contract or tort;

(2) is by an individual for the acquisition of real or personal property, services, money, or credit and if the total consideration to be paid or furnished by the individual does not exceed the jurisdictional limit set out in AS 22.15.040 at the time the controversy arose; or

1 (3) concerns or relates to insurance policies or annuity contracts, except  
2 for contracts between insurance companies.

3 \* Sec. 3. AS 09.43.020(a) is amended to read:

4 (a) On application of a party showing an agreement described in AS 09.43.010,  
5 and the opposing party's refusal to arbitrate, the court shall order the parties to proceed  
6 with arbitration, but, if the opposing party denies the existence of the agreement to  
7 arbitrate or alleges that the agreement is subject to but does not comply with  
8 AS 09.43.015, the court shall proceed [SUMMARILY] to determine [THE  
9 DETERMINATION OF] the issue and, if the agreement is found to exist and, if  
10 subject to AS 09.43.015, to comply with AS 09.43.015, shall order arbitration.

11 \* Sec. 4. AS 09.43.020(b) is amended to read:

12 (b) On application, the court may stay an arbitration proceeding commenced  
13 or threatened on a showing that there is no agreement to arbitrate or that the  
14 agreement is subject to but does not comply with AS 09.43.015. The issue, when  
15 in substantial and bona fide dispute, shall be determined [IMMEDIATELY AND  
16 SUMMARILY TRIED] and the stay ordered if no agreement is found to exist or if the  
17 agreement is subject to but does not comply with AS 09.43.015. If found for the  
18 opposing party, the court shall order the parties to proceed to arbitration.

19 \* Sec. 5. AS 09.43.020 is amended by adding a new subsection to read:

20 (f) When a party challenges under (a) or (b) of this section the existence of  
21 an agreement to arbitrate or the compliance of the agreement with AS 09.43.015, the  
22 court shall immediately proceed with an expedited hearing.

23 \* Sec. 6. AS 09.43.120(a) is amended to read:

24 (a) On application of a party, the court shall vacate an award if  
25 (1) the award was procured by fraud or other undue means;  
26 (2) there was evident partiality by an arbitrator appointed as a neutral  
27 or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;  
28 (3) the arbitrators exceeded their powers;  
29 (4) the arbitrators refused to postpone the hearing upon sufficient cause  
30 being shown for postponement or refused to hear evidence material to the controversy  
31 or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as

1 to prejudice substantially the rights of a party; [OR]

2 (5) there was no arbitration agreement and the issue was not adversely  
3 determined in proceedings under AS 09.43.020 and the party did not participate in the  
4 arbitration hearing without raising the objection; or

5 (6) the arbitration agreement is subject to but does not comply with  
6 AS 09.43.015.

7 \* Sec. 7. AS 09.43.190, 09.43.200, 09.43.210, and 09.43.220 are repealed.

8 \* Sec. 8. COURT RULE CHANGES. The provisions of sec. 5 of this Act have the effect  
9 of changing

10 (1) Rule 77(g), Alaska Rules of Civil Procedure, by changing the requirements  
11 for having an expedited hearing and removing in certain situations the court's discretion  
12 whether to expedite a hearing;

13 (2) Rule 57(a), Alaska Rules of Civil Procedure, by removing in certain  
14 situations, which may include a declaratory judgment, the court's discretion whether to order  
15 a speedy hearing.

16 \* Sec. 9. APPLICABILITY. Sections 1 - 6 of this Act only apply to an arbitration  
17 proceeding that is in progress or begun on or after the effective date of this Act, except that,  
18 if an award has been made by the arbitrator in the proceeding and the time for a request to  
19 modify or vacate the award has expired, secs. 1 - 6 of this Act do not apply to the proceeding.

20 \* Sec. 10. Section 5 of this Act takes effect only if sec. 8 of this Act receives the two-  
21 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of  
22 Alaska.

23 \* Sec. 11. This Act takes effect immediately under AS 01.10.070(c).

not  
considered

CS FOR SENATE BILL NO. 319(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATOR PHILLIPS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to arbitration; amending Rules 57(a) and 77(g), Alaska Rules  
2 of Civil Procedure; and providing for an effective date."

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

4 \* Section 1. AS 09.43.010 is amended to read:

5           Sec. 09.43.010. Arbitration agreements valid; application of article. A  
6 written agreement that complies with AS 09.43.015 to submit a [AN EXISTING]  
7 controversy existing at the time the agreement is entered into to arbitration or a  
8 provision in a written contract to submit to arbitration a subsequent controversy  
9 between the parties is valid, enforceable, and irrevocable, except on [UPON] grounds  
10 that exist at law or in equity for the revocation of a contract. [HOWEVER,  
11 AS 09.43.010 - 09.43.180 DO NOT APPLY TO A LABOR-MANAGEMENT  
12 CONTRACT UNLESS THEY ARE INCORPORATED INTO THE CONTRACT BY  
13 REFERENCE OR THEIR APPLICATION IS PROVIDED FOR BY STATUTE.]

14 \* Sec. 2. AS 09.43.010 is amended by adding a new subsection to read:

1 (b) A provision in a written agreement that is subject to and complies with  
 2 AS 09.43.015 to submit to arbitration a controversy between the parties occurring after  
 3 the agreement is entered into is valid and enforceable except on grounds that exist at  
 4 law or in equity for the revocation of a contract.

5 \* Sec. 3. AS 09.43 is amended by adding new sections to read:

6 **Sec. 09.43.013. Application to labor-management agreements.**  
 7 AS 09.43.010 - 09.43.180 do not apply to a labor-management agreement unless  
 8 AS 09.43.010 - 09.43.180 are incorporated into the agreement by reference or their  
 9 application is provided for by statute.

10 **Sec. 09.43.015. Arbitration agreement requirement.** (a) In order for an  
 11 agreement to provide for arbitration, the agreement must contain a notice that states  
 12 that a party has the option to compel arbitration and to bind the other party to the  
 13 arbitration decision, and that arbitration limits the rights and remedies otherwise  
 14 available under the law. The notice must also state that parties to an arbitration  
 15 agreement do not waive their rights to obtain a judicial determination of whether a  
 16 dispute is arbitrable. This notice must be typed in capital letters within the agreement  
 17 or on a separate document. If an agreement fails to contain the notice required by this  
 18 subsection, a party may not compel arbitration, an arbitration decision is not binding,  
 19 and otherwise available rights and remedies are not limited.

20 (b) Language in substantially the following form satisfies the notice  
 21 requirement of (a) of this section:

22 NOTICE: THIS CONTRACT INCLUDES AN ARBITRATION  
 23 CLAUSE. IF YOU SIGN THIS CONTRACT, YOU CAN BE  
 24 COMPELLED TO SUBMIT ANY DISPUTE UNDER THIS  
 25 CONTRACT TO MANDATORY BINDING ARBITRATION.  
 26 HOWEVER, BY SIGNING THIS CONTRACT, YOU DO NOT  
 27 WAIVE YOUR RIGHT TO OBTAIN A JUDICIAL  
 28 DETERMINATION OF WHETHER A PARTICULAR  
 29 DISPUTE IS ARBITRABLE. BY SIGNING THIS  
 30 CONTRACT WITH AN ARBITRATION CLAUSE, YOU  
 31 WILL BE OR MAY BE LIMITING OR WAIVING YOUR

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RIGHTS TO

- (1) HAVE A DISPUTE UNDER THE CONTRACT RESOLVED IN A COURT OF LAW, EVEN WHERE THE CONTRACT WITH THE ARBITRATION CLAUSE IS VOID OR VOIDABLE DUE TO REPUDIATION, RESCISSION, FRAUD, DURESS, MISTAKE, OR OTHER GROUNDS;
- (2) APPEAL THE ARBITRATOR'S DECISION TO A COURT OF LAW;
- (3) EXERCISE STATUTORY REMEDIES, SUCH AS A LIEN, INJUNCTION, OR CLAIM FOR DAMAGES;
- (4) HAVE THE DISPUTE DECIDED BY A DECISION MAKER WITH APPROPRIATE TRAINING TO DECIDE THE DISPUTE;
- (5) USE DISCOVERY AND OTHER EVIDENCE-GATHERING PROCEDURES OTHERWISE AVAILABLE IN AN ACTION BEFORE A COURT OF LAW;
- (6) OBTAIN A DECISION CONSISTENT WITH THE LAW AND THE FACTS;
- (7) OBTAIN A WRITTEN STATEMENT OF THE LEGAL AND FACTUAL BASES OF THE DECISION;
- (8) RECOVER PUNITIVE DAMAGES IF THE PARTIES' CONTRACT OR ARBITRATION AGREEMENT EXPRESSLY EXCLUDES A RIGHT TO RECOVER PUNITIVE DAMAGES;
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19 proceeding that is in progress or begun on or after the effective date of this Act, except that,  
20 if an award has been made by the arbitrator in the proceeding and the time for a request to  
21 modify or vacate the award has expired, secs. 1 - 7 of this Act do not apply to the proceeding.

22 \* Sec. 11. Section 6 of this Act takes effect only if sec. 9 of this Act receives the two-  
23 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of  
24 Alaska.

25 \* Sec. 12. This Act takes effect immediately under AS 01.10.070(c).



# ALASKA STATE LEGISLATURE

**SENATOR RANDY PHILLIPS**  
**SENATE DISTRICT L**

**SESSION**  
State Capitol  
Juneau, AK 99801  
(907) 465-4949  
800-478-4950  
Fax: 465-4979

**INTERIM**  
P.O. Box 142  
Eagle River AK 99577  
(907) 694-4949  
Fax: 694-4948

April 1, 1998

## MEMORANDUM

**TO:** Senator Tim Kelly  
Senate Rules Committee

**FROM:** Senator Randy Phillips *REP*

**RE:** Senate Bill 319, "An Act relating to arbitration; amending Rules 57(a) and 77(g), Alaska Rules of Civil Procedure; and providing for an effective date."

I request that you schedule the above referenced bill for a Floor vote as soon as possible.

Parties signing contracts such as those in real estate transactions are often unaware of the arbitration clause contained in those contracts. Furthermore, they are under the mistaken assumption that this is a necessary part of a contract. By agreeing to arbitration, a buyer or seller in a real estate transaction or other contractual agreement is waiving rights to a court hearing and to any right to an appeal. While arbitration is encouraged as a means of resolving disputes, it is important the parties to a contract are aware of the ramifications of resolving a dispute by arbitration. In addition there is no monetary limit on arbitration.

Senate Bill 319 requires that language typed in capital letters be within the arbitration agreement or separate document. It also limits claims to \$7,500 to conform with the small claims limit.