

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 86/2

9885 HOUSE JUDICIARY

02

**SB**

**220**

# STATE OF ALASKA

## DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

**TONY KNOWLES, GOVERNOR**

P.O. BOX 110200  
JUNEAU, ALASKA 99811-0200  
PHONE: (907) 465-2200  
FAX: (907) 465-2135

April 17, 2000

The Honorable Pete Kott  
Alaska State Representative  
State Capitol, Room 118  
Juneau, AK 99801

Dear Representative Kott:

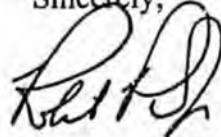
I respectfully request that you schedule Senate Bill 220, an act clarifying the requirements for limited liability companies (LLC's) and partnerships (LLP's) to qualify for the Alaska bidder's and disability preferences under the State Procurement Code, for a hearing in the House Judiciary Committee.

This bill provides needed clarification in recognizing LLC's and LLP's under the state procurement code and furthers the legislative objective of ensuring Alaska businesses receive a preference while safeguarding application of the preferences to bonafide resident businesses.

If you have any questions or need additional information, please feel free to contact my legislative liaison, David Koivuniemi or me.

Thank you in advance for your cooperation.

Sincerely,



Robert Poe, Jr.  
Commissioner

cc: Pat Pourchot, Legislative Director, Office of the Governor



Printed on recycled paper  
by Alaska Litho, Inc.

### **Sponsor Statement for SB 220**

"An act clarifying the requirements for limited liability companies and partnerships to qualify for the Alaska bidder's and disability preferences under the State Procurement Code; and providing for an effective date."

Passage of SB 220 is necessary to clarify the Alaska bidder and disability preference sections of the State procurement statutes regarding limited liability partnerships and limited liability corporations.

Our Procurement Code became effective in 1988, before the inception of limited liability corporations and limited liability partnerships, which were allowed to organize in 1995 and 1997 respectively. Therefore, the procurement preference sections in statute make no reference to them.

This bill inserts language that specifically mentions these types of businesses in the preference sections of the Procurement Code. It also stipulates that all managing members of the Limited Liability Corporation or partnership must be residents of Alaska to qualify for the Alaska bidder's preference. In order to qualify for a disability preference, each of the managing members of the Limited Liability Corporation or partnership must also have a disability.

This clarification is necessary for us to grant preferences to bonafide Alaskan businesses, and it furthers the legislative objectives of the Procurement Code by ensuring that Alaskan businesses receive an advantage in state procurements.

TONY KNOWLES  
GOVERNOR  
[governor@gov.state.ak.us](mailto:governor@gov.state.ak.us)



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

P.O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500  
Fax (907) 465-3532  
[www.gov.state.ak.us](http://www.gov.state.ak.us)

January 21, 2000

SB 220

The Honorable Drue Pearce  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

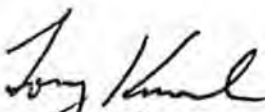
Dear President Pearce:

I am transmitting a bill clarifying the statutory requirements for limited liability companies and limited liability partnerships to qualify for the Alaska bidder's and disability preferences under the State Procurement Code.

Limited liability companies (LLCs) and limited liability partnerships (LLPs) were recently recognized in state law, well after the state procurement code established its Alaska bidder and disability preferences. Therefore, the procurement code preferences do not clearly prescribe qualification requirements for LLCs or LLPs.

By providing needed clarification and recognizing LLCs and LLPs under the state procurement code, this bill furthers the legislative objective of ensuring that Alaska businesses receive a preference while safeguarding application of the preferences to bonafide resident businesses.

Sincerely,

  
Tony Knowles  
Governor

**FISCAL NOTE**

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

No. 1  
Bill Version: SB 220  
(S) Publish Date: 1-24-00

Revision Date/Time (Note if Correction): \_\_\_\_\_  
Title: LLC/LLP's qualifying for Alaska Bidder Preference and Disability Preference  
Sponsor: Rules Committee  
Requestor: Governor

Department Affected: All  
BRU: Centralized Administrative Services  
Component: Purchasing  
COMPONENT SERIAL NO. 60

Expenditures/Revenues: (Thousands of Dollars)  
Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2001	FY 2002	FY2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER (Specify Type)						
<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 (FY 2000) cost: \$ 0.0

POSITIONS:

FULL-TIME	N/A					
PART-TIME	N/A					
TEMPORARY	N/A					

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

This bill would amend AS 36.30.170(b) and (e) to establish qualifications for application of the Alaska Bidder and Disability preferences to Limited Liability Companies and Limited Liability Partnerships bidding on State contracts.

There is no fiscal impact.

Prepared by: Marsha Hubbard, Director  
Division: General Services

Phone: 465-5687  
Date: 11/29/99

Approved by Commissioner: Robert Poe Jr.  
Agency: Department of Administration

Date: 11/30/99

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
For further distribution information, call the Governor's Legislative Office

**CS FOR SENATE BILL NO. 220(FIN)**

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

**TWENTY-FIRST LEGISLATURE - SECOND SESSION**

**BY THE SENATE FINANCE COMMITTEE**

**Offered: 4/13/00**

**Referred: Rules**

**Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the requirements for partnerships and limited liability  
2 companies to qualify for the Alaska bidder preference and a certain disability  
3 preference under the State Procurement Code; and providing for an effective  
4 date."

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

6 \* **Section 1.** AS 36.30.170(b) is amended to read:

7 (b) The procurement officer shall award a contract based on solicited bids to  
8 the lowest responsive and responsible bidder after an Alaska bidder preference of five  
9 percent, an Alaska products preference as described in AS 36.30.322 - 36.30.338, and  
10 a recycled products preference under AS 36.30.337 have been applied. In this  
11 subsection, "Alaska bidder" means a person who

12 (1) holds a current Alaska business license;

13 (2) submits a bid for goods, services, or construction under the name  
14 as appearing on the person's current Alaska business license;

1 (3) has maintained a place of business within the state staffed by the  
2 bidder or an employee of the bidder for a period of six months immediately preceding  
3 the date of the bid;

4 (4) is incorporated or qualified to do business under the laws of the  
5 state, is a sole proprietorship and the proprietor is a resident of the state, is a limited  
6 liability company organized under AS 10.50 and all ~~managing~~ members are  
7 residents of the state, or is a partnership under AS 32.05 or AS 32.11 and all  
8 partners are residents of the state; and

9 (5) if a joint venture, is composed entirely of ventures that qualify  
10 under (1) - (4) of this subsection.

11 \* Sec. 2. AS 36.30.170(e) is amended to read:

12 (e) If a bidder qualifies under (b) of this section as an Alaska bidder, is a  
13 qualifying entity, and is the lowest responsible and responsive bidder with a bid that  
14 is not more than 10 percent higher than the lowest bid, the procurement officer shall  
15 award the contract to that bidder. This subsection does not give a bidder who would  
16 otherwise qualify for a preference under this subsection a preference over another  
17 bidder who would otherwise qualify for a preference under this subsection or (f) of this  
18 section. In this subsection, "qualifying entity" means a

19 (1) sole proprietorship owned by a person with a disability;

20 (2) partnership under AS 32.05 or AS 32.11 if each of the partners is  
21 a person with a disability; [OR]

22 (3) limited liability company organized under AS 10.50 if each of  
23 the ~~managing~~ members is a person with a disability; or

24 (4) corporation that is wholly owned by individuals and each of the  
25 individuals is a person with a disability.

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

*amend #1 — remove "managing" from  
line 6 & line 23*

**SENATE BILL NO. 220**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/24/00

Referred: Labor and Commerce, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act clarifying the requirements for limited liability companies and  
2 partnerships to qualify for the Alaska bidder's and disability preferences under  
3 the State Procurement Code; and providing for an effective date."

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

5 \* **Section 1.** AS 36.30.170(b) is amended to read:

6 (b) The procurement officer shall award a contract based on solicited bids to  
7 the lowest responsive and responsible bidder after an Alaska bidder preference of five  
8 percent, an Alaska products preference as described in AS 36.30.322 - 36.30.338, and  
9 a recycled products preference under AS 36.30.337 have been applied. In this  
10 subsection, "Alaska bidder" means a person who

11 (1) holds a current Alaska business license;

12 (2) submits a bid for goods, services, or construction under the name as  
13 appearing on the person's current Alaska business license;

14 (3) has maintained a place of business within the state staffed by the

1 bidder or an employee of the bidder for a period of six months immediately preceding  
2 the date of the bid;

3 (4) is incorporated or qualified to do business under the laws of the  
4 state, is a sole proprietorship and the proprietor is a resident of the state, is a limited  
5 liability company organized under AS 10.50 and all managing directors are<sup>members</sup>  
6 residents of the state, or is a partnership under AS 32.05 or AS 32.11 and all  
7 partners are residents of the state; and

8 (5) if a joint venture, is composed entirely of ventures that qualify  
9 under (1) - (4) of this subsection.

10 \* Sec. 2. AS 36.30.170(e) is amended to read:

11 (e) If a bidder qualifies under (b) of this section as an Alaska bidder, is a  
12 qualifying entity, and is the lowest responsible and responsive bidder with a bid that  
13 is not more than 10 percent higher than the lowest bid, the procurement officer shall  
14 award the contract to that bidder. This subsection does not give a bidder who would  
15 otherwise qualify for a preference under this subsection a preference over another  
16 bidder who would otherwise qualify for a preference under this subsection or (f) of this  
17 section. In this subsection, "qualifying entity" means a

18 (1) sole proprietorship owned by a person with a disability;

19 (2) partnership under AS 32.05 or AS 32.11 if each of the partners is  
20 a person with a disability; [OR]

21 (3) limited liability company organized under AS 10.50 if each of  
22 the managing directors<sup>members</sup> is a person with a disability; or

23 (4) corporation that is wholly owned by individuals and each of the  
24 individuals is a person with a disability.

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

**SB**

**259**

**THE FOLLOWING PAGES MAY  
NOT FILM LEGIBLY BECAUSE OF  
THE POOR QUALITY OF THE ORIGINAL**

# Theft of identity can lead to ruined credit

I am one of some 100,000 people who discovered last year that their Social Security numbers had been pilfered.

The theft of my identity actually began in 1996, when I was living overseas. Without my knowledge, someone used my Social Security number to order telephone service in Los Angeles County and then disappeared, owing the phone companies thousands of dollars.

I moved back to New York in 1997 and rented an apartment, but in time the phone companies sent the unpaid bills to collection agencies and the agencies, unable to recover the debts, passed the information on to three major national credit bureaus. I was labeled a financial delinquent.

I didn't find out about my status until last year, when I tried to rent another apartment in New York. After weeks of hunting, I found a place I liked. The landlord said I could move in as soon as he ran the routine credit check. The next day he told me that my negative credit rating made me too risky a tenant.

Relegated to a sublet, I was just beginning to make

## STACY SULLIVAN

inquiries at three credit bureaus when the telephone company refused to give me a telephone because of an unpaid bill of \$1,163.67. Someone I'd never met had used my Social Security number to establish telephone service in Hawaiian Gardens, Calif., a city I have never seen. Despite the fact that the phone service was set up in a man's name, the debt was reported on my credit rating.

Once I proved that I was not that person — by showing the telephone company my photo ID and Social Security card — I was absolved of blame and given a telephone. But two weeks later I received a letter that said I would have to pay a \$100 deposit if I wanted to keep my line, because of yet another unpaid bill from a different telephone company.

This time somebody had used not only my Social Security number but also my name to establish phone service in Sun Valley, Calif., another city I have never seen.

When I asked my phone company why I should have to pay a deposit because

someone impersonated me at a company I had never done business with, the customer-service manager acknowledged that this was unfair, but politely explained that, unless I paid the deposit, my telephone would be disconnected.

So began a six-month battle of trying to clear my name. I provided the telephone companies, the credit bureaus and two collection agencies with telephone bills, W-2 forms, health-insurance receipts, credit-card statements and bank statements that proved I was not living in California at the time telephone service was ordered there. Despite my efforts, I received four letters holding me responsible for the bill.

Trapped in a Kafkaesque maze, I decided to file a police report. The police officer who heard my story told me he received an average of four complaints of identity theft each day.

Months passed, and still my name had not been cleared. So I called the collection agency investigating my case and threatened to file a

lawsuit if it did not resolve my fraud claim. I promptly received a letter stating that I was not being held responsible for the remaining delinquent telephone bill.

But the collection agency said that it takes as long as 90 days for this information to be conveyed to the national credit bureaus, and that even then there may be mistakes or delays for which neither the collection agencies nor the credit bureaus will take responsibility.

Nearly four years since my identity was stolen, the unpaid bills are still reflected on my credit rating and I am still unable to rent an apartment.

The most maddening aspect of all this is that it could have been prevented, had the telephone companies simply checked the identity of the person who established telephone service in my name.

Is it too much to ask companies that issue credit cards, sell merchandise or provide services to take simple precautions to identify their customers?

□ Stacy Sullivan, a New York-based writer, is writing a book about the Kosovo Liberation Army.

# Alaska State Legislature



Chairman,  
Judiciary Committee  
Administrative Regulations  
Revenue Committee

Vice Chairman,  
Resources Committee

State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-3873  
Fax: (907) 465-3922

50 Front Street  
Suite 203  
Ketchikan, Alaska 99901  
(907) 225-8088  
Fax: (907) 225-0713

*Senator Robin L. Taylor*

## SB 259 Sponsor Statement Senate Bill

**“An Act relating to crimes and offenses relating to aural representations, recordings, access devices, identification documents, impersonation, false reports and computers; and providing for an effective date”**

Alaska has always been the “Last Frontier.” For most of us who came to this great state it was the mystique and adventure. For others it was a place to escape too. Unfortunately, some of the latter group are escaping from the law and have stolen someone else’s identity to do that.

Acting under an assumed name, with false identification to support the claim, they obtain credit cards and checking accounts often not paying the bills. This leaves honest Alaskans with the problem of dealing with Credit Agencies, or the government with little or no recourse.

But there is more than fraud to deal with. Today criminals can access information by sitting at a computer or giving information over the telephone. These new criminals are not a part of current statute. SB 259 will correct this by updating existing law and establishing that Alaska considers stealing someone’s identity a crime with serious consequences.

Once passed these additions will give law enforcement an additional tool to keep Alaskans safer from fraud and deceit by those who not what they seem.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

CS FOR SENATE BILL NO. 259(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/21/00

Referred: Finance

Sponsor(s): SENATOR TAYLOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to crimes and offenses relating to aural representations,  
2 recordings, access devices, identification documents, impersonation, false reports, and  
3 computers; and providing for an effective date."

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

5 \* Section 1. AS 11.41.455(a) is amended to read:

6 (a) A person commits the crime of unlawful exploitation of a minor if, in the  
7 state and with the intent of producing a live performance, film, audio, video,  
8 electronic, or electromagnetic recording, photograph, negative, slide, book,  
9 newspaper, magazine, or other [PRINTED] material that visually or aurally depicts  
10 the conduct listed in (1) - (7) of this subsection, the person knowingly induces or  
11 employs a child under 18 years of age to engage in, or photographs, films, records, or  
12 televises a child under 18 years of age engaged in, the following actual or simulated  
13 conduct:

14 (1) sexual penetration;

- 1 (2) the lewd touching of another person's genitals, anus, or breast;  
 2 (3) the lewd touching by another person of the child's genitals, anus,  
 3 or breast;  
 4 (4) masturbation;  
 5 (5) bestiality;  
 6 (6) the lewd exhibition of the child's genitals; or  
 7 (7) sexual masochism or sadism.

8 \* Sec. 2. AS 11.41.455(b) is amended to read:

9 (b) A parent, legal guardian, or person having custody or control of a child  
 10 under 18 years of age commits the crime of unlawful exploitation of a minor if, in the  
 11 state, the person permits the child to engage in conduct described in (a) of this section  
 12 knowing that the conduct is intended to be used in producing a live performance, film,  
 13 audio, video, electronic, or electromagnetic recording, photograph, negative, slide,  
 14 book, newspaper, magazine, or other [PRINTED] material that visually or aurally  
 15 depicts the conduct.

16 \* Sec. 3. AS 11.46.140(a) is amended to read:

17 (a) A person commits the crime of theft in the third degree if the person  
 18 commits theft as defined in AS 11.46.100 and

19 (1) the value of the property or services is \$50 or more but less than  
 20 \$500;

21 (2) the property is an access device [A CREDIT CARD]; or

22 (3) the value of the property is less than \$50 and, within the past five  
 23 years, the person has been convicted and sentenced on two or more separate occasions  
 24 in this or another jurisdiction of theft or concealment of merchandise, or an offense  
 25 under another law or ordinance with similar elements.

26 \* Sec. 4. AS 11.46.285 is amended to read:

27 **Sec. 11.46.285. Fraudulent use of an access device [A CREDIT CARD].**

28 (a) A person commits the crime of fraudulent use of an access device [A CREDIT  
 29 CARD] if, with intent to defraud, the person uses an access device [A CREDIT  
 30 CARD] to obtain property or services with knowledge that

31 (1) the access device [CARD] is stolen or forged;

1 (2) the access device [CARD] is expired or has been revoked or  
2 cancelled; or

3 (3) for any other reason, that person's use of the access device [CARD]  
4 is unauthorized by either the issuer or the person to whom the access device [CREDIT  
5 CARD] is issued.

6 (b) Fraudulent use of an access device [A CREDIT CARD] is

7 (1) a class B felony if the value of the property or services obtained  
8 is \$25,000 or more;

9 (2) a class C felony if the value of the property or services obtained is  
10 \$500 or more but less than \$25,000;

11 (3) [(2)] a class A misdemeanor if the value of the property or services  
12 obtained is \$50 or more but less than \$500;

13 (4) [(3)] a class B misdemeanor if the value of the property or services  
14 obtained is less than \$50.

15 \* Sec. 5. AS 11.46.290 is amended to read:

16 Sec. 11.46.290. Obtaining an access device or identification document [A  
17 CREDIT CARD] by fraudulent means. (a) A person commits the crime of  
18 obtaining an access device or identification document [A CREDIT CARD] by  
19 fraudulent means if

20 (1) the person buys an access device or identification document [A  
21 CREDIT CARD] from a person other than the issuer or, as other than the issuer, the  
22 person sells an access device or identification document [A CREDIT CARD];

23 (2) with intent to defraud, the person obtains an access device or  
24 identification document [CONTROL OF A CREDIT CARD AS A SECURITY FOR  
25 DEBT]; or

26 (3) with intent to defraud, the person makes a false statement in an  
27 application for an access device or identification document [A CREDIT CARD].

28 (b) [OBTAINING A CREDIT CARD BY FRAUDULENT MEANS UNDER  
29 (a)(1) OR (2) OF THIS SECTION IS A CLASS C FELONY.] Obtaining an access  
30 device or identification document [A CREDIT CARD] by fraudulent means [UNDER  
31 (a)(3) OF THIS SECTION] is a class A misdemeanor.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

\* Sec. 6. AS 11.46 is amended by adding a new section to read:

**Sec. 11.46.565. Criminal impersonation in the first degree.** (a) A person commits the crime of criminal impersonation in the first degree if the person

(1) possesses an access device or identification document of another person;

(2) without authorization of the other person, uses the access device or identification document of another person to obtain a false identification document, open an account at a financial institution, obtain an access device, or obtain property or services; and

(3) with criminal negligence, damages the financial reputation of the other person.

*Change back to reckless*  
*HIS REPUTATION WAS "RECKLESSLY"*

(b) Criminal impersonation in the first degree is a class B felony.

\* Sec. 7. AS 11.46.570 is amended to read:

**Sec. 11.46.570. Criminal impersonation in the second degree.** (a) A person commits the crime of criminal impersonation in the second degree if the person

(1) assumes a false identity and does an act in the assumed character with intent to defraud, commit a crime, or obtain a benefit to which the person is not entitled; or

(2) pretends to be a representative of some person or organization and does an act in the pretended capacity with intent to defraud, commit a crime, or obtain a benefit to which the person is not entitled.

(b) Criminal impersonation in the second degree is a class A misdemeanor.

\* Sec. 8. AS 11.46.630(b)(1) is amended to read:

(1) "business record" means a writing, recording, or article kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity;

*we had electronic data*

\* Sec. 9. AS 11.46.710(c) is amended to read:

(c) Except as provided in (d) of this section, deceptive [DECEPTIVE] business practices is a class A misdemeanor.

\* Sec. 10. AS 11.46.710 is amended by adding a new subsection to read:

(d) Deceptive business practices is a class C felony if the person uses the

*w/o it being stated I will read it knowingly as to membership state membership as to membership*

1 Internet or a computer network to commit the offense. In this subsection, "Internet"  
 2 means the combination of computer systems or networks that make up the international  
 3 network for interactive communications services, including remote logins, file transfer,  
 4 electronic mail, and newsgroups.

5 \* Sec. 11. AS 11.46.740(a) is amended to read:

6 (a) A person commits the offense of criminal use of a computer if, having no  
 7 right to do so or any reasonable ground to believe the person has such a right, the  
 8 person knowingly accesses, [OR] causes to be accessed, or exceeds the person's  
 9 authorized access to a computer, computer system, computer program, computer  
 10 network, or any part of a computer system or network, and, as a result of or in the  
 11 course of that access,

12 (1) obtains information concerning a person; [OR]

13 (2) introduces false information into a computer, computer system,  
 14 computer program, or computer network with the intent to damage or enhance the  
 15 data record or the financial reputation of a person;

16 (3) introduces false information into a computer, computer system,  
 17 computer program, or computer network and, with criminal negligence, damages  
 18 or enhances the data record or the financial reputation of a person;

19 (4) obtains proprietary information of another person;

20 (5) obtains information that is only available to the public for a fee;

21 (6) introduces instructions, a computer program, or other  
 22 information that tampers with, disrupts, disables, or destroys a computer,  
 23 computer system, computer program, computer network, or any part of a  
 24 computer system or network; or

25 (7) encrypts or decrypts data.

26 \* Sec. 12. AS 11.46.740 is amended by adding a new subsection to read:

27 (c) In this section, "proprietary information" means scientific, technical, or  
 28 commercial information, including a design, process, procedure, customer list, supplier  
 29 list, or customer records that the holder of the information has not made available to  
 30 the public.

31 \* Sec. 13. AS 11.46.990 is amended by adding a new paragraph to read:

1 (14) "financial reputation" means a person's

2 (A) ability to obtain a loan from a financial institution, open an  
3 account with a financial institution, obtain property or services on credit, or  
4 obtain an access device; or

5 (B) creditworthiness in a credit report.

6 \* Sec. 14. AS 11.56.800(a) is amended to read:

7 (a) A person commits the crime of making a false report if the person  
8 knowingly

9 (1) gives false information to a peace officer with the intent of  
10 implicating another in an offense [A CRIME];

11 (2) makes a false report to a peace officer that a crime has occurred or  
12 is about to occur;

13 (3) makes a false report or gives a false alarm that a fire or other  
14 incident dangerous to life or property calling for an emergency response has occurred  
15 or is about to occur; or

16 (4) makes a false report to the Department of Natural Resources under  
17 AS 46.17 concerning the condition of a dam or reservoir.

18 \* Sec. 15. AS 11.61.125(d) is amended to read:

19 (d) In this section, "distribution" includes delivering, selling, renting, leasing,  
20 lending, giving, circulating, exhibiting, presenting, providing, [AND] exchanging, and  
21 placing on a computer network or computer system, whether or not for monetary  
22 or other consideration.

23 \* Sec. 16. AS 11.81.900(b)(48) is amended to read:

24 (48) "property" means an article, substance, or thing of value, including  
25 money, tangible and intangible personal property including data or information stored  
26 in a computer program, system, or network, real property, an access device [A  
27 CREDIT CARD], a domestic pet or livestock regardless of value, choses-in-action, and  
28 evidence of debt or of contract; a commodity of a public utility such as gas, electricity,  
29 steam, or water constitutes property, but the supplying of such a commodity to  
30 premises from an outside source by means of wires, pipes, conduits, or other  
31 equipment is considered a rendition of a service rather than a sale or delivery of

*in not  
have  
return*

1 property;

2 \* **Sec. 17.** AS 11.81.900(b) is amended by adding new paragraphs to read:

3 (61) "access device" means a card, credit card, plate, code, account  
4 number, algorithm, or identification number, including a social security number,  
5 electronic serial number, or password, that is capable of being used, alone or in  
6 conjunction with another access device or identification document, to obtain property  
7 or services, or that can be used to initiate a transfer of property;

8 (62) "identification document" means a paper, instrument, or other  
9 article used to establish the identity of a person; "identification document" includes a  
10 social security card, driver's license, non-driver's identification, birth certificate,  
11 passport, employee identification, or hunting or fishing license.

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

14 **APPLICABILITY.** This Act applies to acts and offenses committed or completed on  
15 or after the effective date of this Act.

16 \* **Sec. 19.** This Act takes effect immediately under AS 01.10.070(c).

# LEGAL SERVICES

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

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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 9, 2000

**SUBJECT:** Sectional Summary of CSSB 259(JUD), Draft, DATED 3/2/00.  
(Work Order No. 21-LS1284\1)

**TO:** Senator Robin Taylor  
Attn: Jim Pound

**FROM:** Gerald P. Luckhaupt *Jeg*  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1. Amends AS 11.41.455(a), sexual exploitation of a minor, by expanding the types of media involved.

Section 2. Makes a corresponding change to the change made in sec. 1.

Section 3. Changes the ways a person may commit theft in the third degree.

Section 4. Changes the existing crime of fraudulent use of a credit card to fraudulent use of an access device.

Section 5. Changes the existing crime of obtaining a credit card by fraudulent means to obtaining an access device or identification document by fraudulent means.

Section 6. Creates the new crime of criminal impersonation in the first degree.

Section 7. Makes the existing crime of criminal impersonation, criminal impersonation in the second degree.

Section 8. Expands the definition of business record.

Sections 9 and 10. Makes the existing crime of deceptive business practices a class C felony if the defendant uses a computer to commit the offense.

Section 11. Expands the ways to commit the crime of criminal use of a computer.

Senator Robin Taylor  
March 9, 2000  
Page 2

Section 12. Adds a definition for purposes of the crime of criminal use of a computer.

Section 13. Adds a definition for purposes of our crimes relating to property.

Section 14. Expands the definition of distribution for purposes of child pornography.

Section 15. Amends the definition of property in our criminal code.

Section 16. Adds new definitions to our criminal code.

Section 17. Provides an applicability section.

Section 18. Provides an immediate effective date.

GPL:pl:glc  
00-082.plm

## *Alaska State Troopers*



# WHITE COLLAR CRIME SECTION

\* \* \* \* \*

The White Collar Crime Section is charged with the duties of coordinating and or investigating selected acts of forgery, fraud, embezzlement, unsworn falsification, perjury, credit card crimes, politically sensitive matters, crimes which involve computers, to include forensic data recovery and analysis along with other investigations designated by the commander of the Criminal Investigation Bureau.

Currently, the White Collar Crime Section consists of one Sergeant and two Investigators. Investigators assigned to the White Collar Crime Section many times deal with complex cases that require many hours of document analysis in order to identify criminal violations. They work closely with prosecutors within the Department of Law's Office of Special Prosecutions and Appeals.

The Alaska State Trooper's White Collar Crime Section is a voting member of the National White Collar Crimes Center. This allows the section to draw on the many services and resources they provide, such as up to date training, data and document analysis, intelligence data bases, computer and network expertise and many other helpful tools that the white collar crime investigator may need.

Members of the White Collar Crime Section, while not auditors, have received specialized training in Fraud and Financial Crimes Investigative Techniques, Complex Crimes Case Management, the Investigation of Internet Crimes, and Computer Forensics.

# FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO. CSSB 259 (JUD)

Revision Date/Time (Note if correction) 4-Apr-00 Dept. Affected Administration  
 Title An Act relating to crimes and offenses relating BRU Legal and Advocacy Services  
to aural representations, recordings ... Component Public Defender Agency  
 Sponsor Senator Taylor  
 Requester (S) FIN Component No. 1631

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel	3.3	3.3	3.3	3.3	3.3	3.3
Contractual	11.7	11.7	11.7	11.7	11.7	11.7
Supplies						
Equipment	6.5	5.0	5.0	5.0	5.0	5.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>21.5</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	21.5	20.0	20.0	20.0	20.0	20.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>21.5</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>	<b>20.0</b>

Estimate of any current year (FY2000) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

See attached.

Prepared by: Barbara Brink, Director Phone 264-4414  
 Division Public Defender Agency Date/Time \_\_\_\_\_  
 Approved by Commissioner - Robert Poe Jr. *Robert Poe Jr.* Date 4/4/00  
 Agency Department of Administration

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

## FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO: CSSB 259 (JUD)

### Analysis (continued)

This bill amends current law and adds new statutes to enable prosecution of a wide variety of computer-related offenses.

Prosecution and defense of these offenses will require sophisticated technical expertise. The Public Defender Agency does not currently have the computer equipment and the staff who have the technical knowledge necessary to defend criminal cases that could be brought under this new legislation.

It is difficult to predict how many additional cases the Public Defender Agency would be appointed to if this bill becomes law. The Department of Law has estimated that there would only be ten additional cases prosecuted in the first year and says it does not anticipate much in the way of increased workload. The Public Defender Agency is concerned about these estimates. This is a very broadly worded bill that would make unlawful a wide range of activity on individual personal computers, computer networks, and on the Internet. Although the Agency has concerns about the impact of this legislation in coming years, we will use the Department of Law's estimates.

The Public Defender Agency does not currently have the sophisticated computer equipment, software, peripherals, and associated communication devices that are necessary for the defense of these cases. We are requesting a one-time equipment purchase for our Anchorage office and plan to use this equipment as a resource for the rest of the state, too. We are paralleling the Department of Law's requests in terms of maintenance of this equipment, contractual services for training and employee travel. We are adding a small additional amount in contractual services anticipating that one case will go to trial in which we will need the services of an expert witness.

# FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO. CSSB 259 (JUD)

Revision Date/Time (Note if correction) _____	Dept. Affected _____	Law _____
Title <u>"An Act relating to crimes and offenses relating to aural representations, ... access devices ... computers; ..."</u>	BRU	<u>Criminal Division</u>
Sponsor <u>Senator Taylor</u>	Component	<u>1st Judicial Dist; 4th Judicial Dist; Criminal Appeals/Special Litigation</u>
Requester <u>Senate Judiciary Committee</u>	Component No.	<u>2198;2201;2203</u>

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel	3.3	3.3	3.3	3.3	3.3	3.3
Contractual	6.7	6.7	6.7	6.7	6.7	6.7
Supplies						
Equipment	5.0	5.0	5.0	5.0	5.0	5.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	15.0	15.0	15.0	15.0	15.0	15.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>

Estimate of any current year (FY2000) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

CSSB 259 (JUD) amends and expands the substantive criminal law to address the use of computers and other technology in the widespread perpetration of crimes. Child pornography, theft of personal information with the intent to defraud, theft of personal information resulting in damage to a person's financial reputation, deceptive business practices, "hacking" to get unauthorized information or introduce false information, and introducing damaging viruses, are all offenses where technology has offered new ways for criminals to victimize individuals. The amendments in this bill will update existing law to help law enforcement prosecute those who cause harm to others through the use of computers and other technology.

Prepared by: Joan M. Kasson *Joan M. Kasson*  
 Division Attorney General's Office  
 Approved by Commissioner *Reddy* Bruce M. Botelho, Attorney General  
 Agency Department of Law

Phone 465-5370  
 Date/Time 3/21/00, 11:39 AM  
 Date 3/21/00

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO. CSSB 259 (JUD)

ANALYSIS CONTINUATION

Much of the bill expands on existing crimes already being prosecuted, and is not anticipated to cause increased workload. The new crimes defined in the bill are expected to result in approximately ten new prosecutions in the first year, with the number increasing in future years. These new white-collar cases will be handled by existing staff. Although no new personnel are believed to be necessary, other resources will be needed.

Investigation and prosecution of cybercrimes require that the prosecutor keep up with the constantly changing world of information technology. Those who use computers to commit crimes are very knowledgeable about technology, and usually have state-of-the-art equipment. Prosecutors must have the same or better knowledge and equipment as those who use the equipment for illegal purposes.

The Department of Law intends to have three of its prosecutors specialize in this technology driven area of law: one in Anchorage OSPA, and one each in the Juneau and Fairbanks district attorney's offices. These assistant district attorneys will need on-going training to stay ahead of the inventive ways people come up with to use technology to cause harm to others and to keep up with how law enforcement is responding in other jurisdictions. The department estimates \$10.0 per year will be spent on training, divided equally between the three components. \$5.0 per year is included to maintain state-of-the-art computer equipment, software, peripherals, and associated communications devices in Anchorage OSPA as a resource for the entire Criminal Division to use in preparing and presenting its cases.

FISCAL NOTE

STATE OF ALASKA  
2000 Legislative Session

Bill Version: 4 CSSB 259 (JUD)  
(S) Publish Date: 4-13-00

Revision Date: 04/05/00  
Title: An Act relating to crimes involving computers, access devices, other technology and identification documents  
Sponsor: Senator Robin Taylor  
Requester: Senate Finance Committee

Dept. Affected Public Safety  
BRU AK State Troopers  
Component Criminal Investigations Bureau  
Component Serial No. 830

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY01	FY02	FY03	FY04	FY05	FY06
Personal Services	0.0					
Travel	0.0					
Contractual	7.8	7.8	7.8	7.8	7.8	7.8
Supplies	0.0					
Equipment	15.0					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
<b>TOTAL OPERATING</b>	<b>22.8</b>	<b>7.8</b>	<b>7.8</b>	<b>7.8</b>	<b>7.8</b>	<b>7.8</b>

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0					
1003 GF Match	0.0					
1004 GF	22.8	7.8	7.8	7.8	7.8	7.8
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
1091 Designated Program Receipts	0.0					
<b>TOTAL</b>	<b>22.8</b>	<b>7.8</b>	<b>7.8</b>	<b>7.8</b>	<b>7.8</b>	<b>7.8</b>

Estimate of any current year (FY00) costs: 0.0

POSITIONS

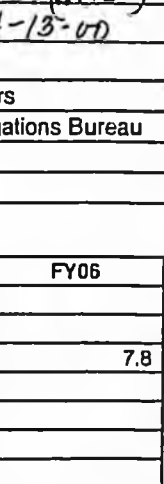
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*  
 CSSB 259 (JUD) amends and expands the substantive criminal law to address the use of computers and other technology in the widespread perpetration of crimes.  
  
 This fiscal note funds an equipment request in FY01 to provide computer equipment adequate to meet new and expanded responsibilities provided for in this legislation. In addition, the request by the Department of Public Safety to provide training in this new field is included in the fiscal note at \$7.8 per year.

Prepared By: SENATE FINANCE COMMITTEE

  
 SENATOR SEAN PARNELL, CO-CHAIR

Date: 4/5/00  
Phone: 465-2995

  
 SENATOR JOHN TORGERSON, CO-CHAIR

Date: 4/5/00  
Phone: 465-2828

# Alaska Association of Chiefs of Police



April 5, 2000

Senator Robin Taylor  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

Dear Senator Taylor:

On behalf of the Alaska Association of Chiefs of Police, I am writing in support of Committee Substitute for Senate Bill 259.

Several important issues are addressed by this bill, including the crime of assuming another's identity by use of various access devices. The bill would provide severe penalties for those who obtain devices and documents to use in the further commission of crimes and who destroy the lives, businesses, credit, and credentials of innocent victims in the process.

CS for SB 259 also addresses the need for criminal liability in cases where self defense is used all too frequently to avoid prosecution for a criminal act. Current Alaska law makes it extremely difficult to prosecute defendants who use self defense as an excuse to cover up illegitimate and often times deadly behavior. Limitations must be made to protect the lives of innocent victims as well punish those who harm others intentionally.

Sincerely,

A handwritten signature in cursive script, reading "Duane S. Udland", is positioned above the typed name.

Duane S. Udland, President  
Alaska Association of Chiefs of Police

# Impostor gains access to couple's savings

By AMANDA BOHMAN  
Staff Writer

When Nancy Kuhn received a letter from her credit union asking to verify her change of address to Juneau, she knew there was a mistake.

The Kuhns, who live in Fairbanks, hadn't moved to Juneau and didn't plan to.

Kuhn called Alaska USA Federal Credit Union to tell them the address change was wrong. That's when she learned of the four withdrawals from her account.

Someone posing as her husband not only changed the address of the account but had most of the money—\$4,900—wired to Georgia.

"This is a case of stolen identity," Kuhn said. "It's a thing we all read about, but it never happens to us."

The impostor made the first three withdrawals, each for \$1,000, the same day as the address change on Jan. 14. The fourth withdrawal, for \$1,900, was made a day later.

In Jonesboro, Ga., the impostor showed up at a Western

Union office carrying a fake military identification card with Eugene Kuhn's name and Social Security number on it, Nancy Kuhn said credit union officials told her. The person knew Eugene's credit union savings account number and the date the account was opened. The only thing the impostor got wrong, Kuhn said, was her husband's birthdate.

Jack Simmonds, senior vice president of operations at Alaska USA, said the credit union asked Western Union to compare the signature at the wire service with the signature on the account. When they didn't match, the credit union reimbursed the Kuhns.

"I don't think people should be concerned," Simmonds said. "The credit union has made this person whole. The member has not lost any money."

Simmonds said the credit union's insurance company would probably investigate the fraud, along with the FBI.

He said that for security reasons he could not comment on account. See THEFT, Page A-8

Fairbanks Daily News-Miner, Saturday, February 19, 2000

## THEFT: Impostor steals \$4,900

Continued from Page A-1

access accounts at the credit union. But he said credit union members have the option of having a password. "We take every reasonable step to keep accounts secure."

The credit union was almost too secure for Kuhn at one point. She said she closed one of the couple's accounts in a huff last fall because the credit union demanded both her driver's license number and her Social Security number for a withdrawal receipt. Kuhn said she was willing to show that information but re-

fused to let the bank put it on her receipt, in case it fell out of her purse or something, she said.

Kuhn said the credit union told her it would need the name, types of accounts at the credit union, Social Security number and date of birth from someone to access bank records. The couple is perplexed as to how someone could get that information, which is supposedly private.

Kuhn said her husband is "a little bit sloppy" but that he's never lost anything. "I don't think he ever misplaced one of

the statements. I keep track of those."

The couple opened the savings account in 1975, before the credit union was bought by Alaska USA, Kuhn said.

She and her husband don't know anybody in Jonesboro, which is a busy suburb of Atlanta.

Fairbanks police referred Kuhn's complaint to the FBI. Neither the Fairbanks FBI bureau or the Anchorage bureau have begun investigating.

# FISCAL NOTE No. 3

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

Bill Version: CS&B 259 (JUD)

(S) Publish Date: 3-22-00

Revision Date/Time (Note if correction) 21-Mar-00 Dept. Affected Administration  
 Title "An Act relating to criminal impersonation" BRU Legal and Advocacy Services  
 Component Public Defender Agency  
 Sponsor Senator Taylor  
 Requester (S) JUD Component No. 1631

## Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	46.5	46.5	46.5	46.5	46.5	46.5
Travel	3.5	3.5	3.5	3.5	3.5	3.5
Contractual	26.3	26.3	26.3	26.3	26.3	26.3
Supplies	1.9	1.9	1.9	1.9	1.9	1.9
Equipment	6.5	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>84.7</b>	<b>78.2</b>	<b>78.2</b>	<b>78.2</b>	<b>78.2</b>	<b>78.2</b>

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

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

## FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	84.7	78.2	78.2	78.2	78.2	78.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>84.7</b>	<b>78.2</b>	<b>78.2</b>	<b>78.2</b>	<b>78.2</b>	<b>78.2</b>

Estimate of any current year (FY2000) cost: \_\_\_\_\_

### POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

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

This bill amends current law and adds new statutes to enable prosecution of a wide variety of computer-related offenses.

Prosecution and defense of these offenses will require sophisticated technical expertise. The Public Defender Agency does not currently have staff who have the technical knowledge necessary to defend criminal cases that could be brought under this new legislation.

The Public Defender Agency will need to hire a Programmer Analyst I in order to consult with and train the attorneys appointed to defend these cases. The Programmer Analyst will be based in Anchorage. In addition to providing technical assistance on individual cases in Anchorage, the Programmer Analyst would also be responsible for training attorneys and investigators in all Public Defender Agency offices on technical issues in these cases. One-time equipment costs for computer equipment is also included in the first year.

Prepared by: Barbara Brink, Director Phone 264-4414  
 Division Public Defender Agency Date/Time \_\_\_\_\_  
 Approved by Commissioner -- Robert Poe, Jr. Date 3/21/00  
 Agency Department of Administration

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

**SB**

**268**



**SENATOR DAVE DONLEY**  
ALASKA STATE LEGISLATURE

**MEMORANDUM**

To: Representative Pete Kott, Chair of the House Judiciary Committee  
Fr: Senator Dave Donley *DD*  
Dt: March 22, 2000  
Re: Scheduling SB 268 for a hearing in the House Judiciary Committee -- "*An Act relating to mandatory 99-year terms of imprisonment for persons convicted of certain murders.*"

---

I request that you schedule SB 268 "*An Act relating to mandatory 99-year terms of imprisonment for persons convicted of certain murders.*" for consideration in the House Judiciary Committee at your earliest possible convenience.

Senate Bill 268 would require those convicted of murder in the first degree to be sentenced to a mandatory term of imprisonment of 99 years when the defendant convicted of the murder personally caused the death of a person, other than a participant, during a robbery.

**This measure passed the Senate unanimously.**

Thank you for considering this request.

DD/hm

Vice-Chair, Senate Finance Committee • Chair, Capital Budget Subcommittee • Co-Chair, Anchorage Caucus  
Member: Senate Judiciary Committee • Senate Labor & Commerce Committee • Legislative Council

---

January-May: STATE CAPITOL • JUNEAU, ALASKA • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595  
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, ALASKA • 99501 • (907) 269-0234 • FAX: (907) 269-0238  
[www.akrepublicans.org/Donley.htm](http://www.akrepublicans.org/Donley.htm) • [www.legis.state.ak.us/senate/donley.htm](http://www.legis.state.ak.us/senate/donley.htm)



# SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

## SPONSOR STATEMENT

### SENATE BILL 268

#### **"AN ACT RELATING TO MANDATORY 99-YEAR TERMS OF IMPRISONMENT FOR PERSONS CONVICTED OF CERTAIN MURDERS."**

Senate Bill 268 would require those convicted of murder in the first degree to be sentenced to a mandatory term of imprisonment of 99 years when the defendant convicted of the murder personally caused the death of a person, other than a participant, during a robbery.

SB 268 is in direct response to the recent increase in murders of late night restaurant workers and taxi drivers and was introduced at the request of the Alaska Hospitality Association. A clear message needs to be sent to would be robbers who believe it necessary to take another life during a robbery. **Any such action is not going to be tolerated by the people of Alaska.** The lives of our mothers, daughters, sons and fathers who work these late shifts are too precious for us to stand idly by and watch as this trend continues.

Senate Bill 268 would add this new standard to three existing provisions of law authored by Senator Donley in 1990 that also require the mandatory 99 year sentence when:

- The defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter or correctional employee who was performing professional duties at the time of the murder;
- The defendant has been previously convicted of a murder in the first degree; or
- The court finds clear and convincing evidence that the defendant subjected the victim to substantial physical torture.

By brutally taking lives during robberies, these offenders have demonstrated their wanton disregard for life. Such people need to know such evil actions will have serious consequences. SB 268 sends a clear message to potential future robbers not to kill.

DD/hrn

Vice-Chair, Senate Finance Committee • Chair, Capital Budget Subcommittee • Co-Chair, Anchorage Caucus  
Member: Senate Judiciary Committee • Senate Labor & Commerce Committee • Legislative Council

---

January-May: STATE CAPITOL • JUNEAU, ALASKA • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595  
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, ALASKA • 99501 • (907) 269-0234 • FAX: (907) 269-0238  
[www.akrepublicans.org/Donley.htm](http://www.akrepublicans.org/Donley.htm) • [www.legis.state.ak.us/senate/donley.htm](http://www.legis.state.ak.us/senate/donley.htm)

SENATE BILL NO. 268

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY SENATORS DONLEY, Taylor, Halford, Leman

REPRESENTATIVE Masek

Introduced: 2/11/00

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to mandatory 99-year terms of imprisonment for persons  
2 convicted of certain murders."

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

4 \* Section 1. AS 12.55.125(a) is amended to read:

5 (a) A defendant convicted of murder in the first degree shall be sentenced to  
6 a definite term of imprisonment of at least 20 years but not more than 99 years. A  
7 defendant convicted of murder in the first degree shall be sentenced to a mandatory  
8 term of imprisonment of 99 years when

9 (1) the defendant is convicted of the murder of a uniformed or  
10 otherwise clearly identified peace officer, fire fighter, or correctional employee who  
11 was engaged in the performance of official duties at the time of the murder;

12 (2) the defendant has been previously convicted of

13 (A) murder in the first degree under AS 11.41.100 or former  
14 AS 11.15.010 or 11.15.020;

1 (B) murder in the second degree under AS 11.41.110 or former  
2 AS 11.15.030; or

3 (C) homicide under the laws of another jurisdiction when the  
4 offense of which the defendant was convicted contains elements similar to first  
5 degree murder under AS 11.41.100 or second degree murder under  
6 AS 11.41.110; [OR]

7 (3) the court finds by clear and convincing evidence that the defendant  
8 subjected the murder victim to substantial physical torture; or

9 (4) the defendant is convicted of the murder of and personally  
10 caused the death of a person, other than a participant, during a robbery.

*amend #1*

11 \* Sec. 2. The uncoded law of the State of Alaska is amended by adding a new section  
12 to read:

*which the A was convicted*

13 APPLICABILITY. This Act applies to offenses committed or or after the effective  
14 date of this Act.

*amend #2 through an act that occurred during the robbery*

*Conceptual amendment encompassing 2 concepts*

*a) need to clarify that A was convicted of robbery  
b) clarifies act during robbery so that if person takes A's property while A is in prison, it will count.*

**SB**

**286**

# ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair  
Sen. Rick Halford, Vice-Chair  
Sen. Dave Donley  
Sen. John Torgerson  
Sen. Johnny Ellis



State Capitol  
Juneau, AK 99801-1182  
(907) 465-3717 fax: 465-3922  
Interim  
716 W. 4<sup>th</sup> Ave. Suite 540  
Anchorage, AK 99501  
(907) 269-0220 fax: 269-0163

## Senate Judiciary Committee

Representative Pete Kott  
Chair, House Judiciary Committee  
State Capitol, Room 118  
Juneau, Alaska 99801-1182

Dear Representative Kott:

Please accept this letter as a request for the House Judiciary Committee to consider CS for Senate Bill 286. "An Act relating to the duties and powers of the attorney general."

This bill is the result of work conducted during the interim by the sub-committee on privatization. That panel determined that the attorney general is not a constitutional officer. Based on that, the legislature may by statute define the AG's role and responsibilities.

Attached you will find a copy of the Bill, Sponsor Statement, and other supporting information. Thank you for considering and scheduling this bill as soon as possible. If you have any questions, please feel free to contact Jim Pound or me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robin".  
Robin L. Taylor  
Senator

Attachments

RLT/jp

# ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair  
Sen. Rick Halford, Vice-Chair  
Sen. Dave Donley  
Sen. John Torgerson  
Sen. Johnny Ellis



State Capitol  
Juneau, AK 99801-1182  
(907) 465-3717  
Fax: 465-3922

## Senate Judiciary Committee

### SPONSOR STATEMENT

SB 286

"An Act relating to the duties and powers of the attorney general."

SB 286 is an attempt to clarify the duties of the Attorney General, place into statute that the Attorney General shall defend the Constitution of the State of Alaska, and put into law that the Legislative power to make appropriations constrains and limits the Attorney General's authority to settle cases.

The Judiciary Committee worked closely with members of the Subcommittee on Privatization and considered recommendations. The subcommittee found, and the Department reluctantly agreed, that the Attorney General is NOT a constitutional officer and that the Legislature, by statute, may define the role and responsibilities of the head of the Department of Law.

It is the intent of this legislation that the Attorney General defend and uphold the Constitution of the State of Alaska, and that any settlement entered into by the Attorney General which recognizes a present or future duty or obligation on the part of the State which is not contained in statute or for which appropriations have not been provided must expressly provide that the duty or obligation is subject to appropriation by the Legislature.

CS FOR SENATE BILL NO. 286(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/23/00

Referred: Rules

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the duties and powers of the attorney general."

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

3 \* Section 1. AS 44.23.020(b) is amended to read:

4 (b) The attorney general shall

5 (1) defend the Constitution of the State of Alaska;

6 (2) [(1)] bring, prosecute, and defend all necessary and proper actions

7 in the name of the state for the collection of revenue;

8 (3) [(2)] represent the state in all civil actions in which the state is a

9 party;

10 (4) [(3)] prosecute all cases involving violation of state law, and file

11 informations and prosecute all offenses against the revenue laws and other state laws

12 where there is no other provision for their prosecution;

13 (5) [(4)] administer state legal services, including the furnishing of

14 written legal opinions to the governor, the legislature, and all state officers and

15 departments as the governor directs; and give legal advice on a law, proposed law, or

1 proposed legislative measure upon request by the legislature or a member of the  
2 legislature;

3 (6) [(5)] draft legal instruments for the state;

4 (7) [(6)] make available a report to the legislature, through the  
5 governor, at each regular legislative session

6 (A) of the work and expenditures of the office; and

7 (B) on needed legislation or amendments to existing law;

8 *generally* (8) [(7)] perform all other duties required by law [OR WHICH  
9 ~~USUALLY PERTAIN TO THE OFFICE OF ATTORNEY GENERAL IN A STATE,~~

10 and *other states (instead of being able*

11 (9) [(8)] prepare, publish, and revise as it becomes useful or necessary *to*  
12 to do so an information pamphlet on landlord and tenant rights and the means of *pick*  
13 making complaints to appropriate public agencies concerning landlord and tenant *one*  
14 rights; the contents of the pamphlet and any revision shall be approved by the *state*  
15 Department of Law, division of consumer protection, before publication.

16 \* Sec. 2. AS 44.23.020 is amended by adding a new subsection to read:

17 (d) The attorney general may, subject to the power of the legislature to enact  
18 laws and make appropriations, settle actions, cases, and offenses under (b) of this  
19 section in which the attorney general represents the state and in which the state is a  
20 party.

*wants to end these crossed out*

*→ consent decree  
→ chapter on common law powers of AG.  
(NAAG) publication position is that common law is necessary for AGs to do their jobs.*

# LEGAL SERVICES

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

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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 23, 2000

**SUBJECT:** CSSB 286(JUD) (Work Order No. 1-LS1512\G)

**TO:** Senator Robin Taylor, Chair  
Senate Judiciary Committee  
Attn: Sue Mossgrove

**FROM:** Kathryn L. Kurtz *KLK*  
Legislative Counsel

Enclosed is the bill you requested, in final form.

The purpose of this memo is to explain why this version looks different than the previous draft.

The deletion of the words "state, including the" in line 5 of the previous version of the bill (1-LS1512\A) means that there is no longer any substantive change to AS 44.23.020(a). The change to the catch line deleting the word "and" is not substantive; that is a clean-up change made by this office. The catch line is not law. Since there is no substantive change, subsection (a) should not be included in the bill. The enclosed version reflects this.

The new subsection relating to the power of the attorney general to settle actions, on page 2 line 15 of the \A version, is being added as a new subsection (d), rather than subsection (c). This re-ordering will not change the legal effect of the bill. There may be a logical preference, however, to place this more general material before the existing date-specific material dealing with title to submerged lands in the current subsection (c).

If this is the case, and the bill is enacted, you may request that the revisor re-letter these subsections so that the new material on settling actions comes before the existing subsection on title to submerged lands by simply sending a letter to the revisor. The revisor is empowered to renumber parts of sections under AS 01.05.031.

These changes shorten the bill, and will, we hope, make it easier for the reader to quickly identify what is being changed. Thank you for your understanding. Please call me if you have any questions.

KLK:pl  
00-107.plm

# LEGAL SERVICES

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

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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 16, 2000

**SUBJECT:** SB 286: Powers and Duties of the Attorney General (Work Order No. 21-LS1512\D)

**TO:** Senator Robin Taylor

**FROM:** Kathryn L. Kurtz *KK*  
Legislative Counsel

You asked 1) whether it would be possible, by statute, to make the attorney general terminable only for cause, and 2) how states such as New York, which do not give the attorney general common law powers, define the powers of the attorney general in statute.

### **Hiring and Firing the Attorney General**

The powers and duties of the governor relating to department heads are set forth in Article III, sections 24 - 26 of the Constitution of the State of Alaska:

**SECTION 24. Supervision.** Each principal department shall be under the supervision of the governor.

**SECTION 25. Department Heads.** The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the secretary of state. The heads of all principal departments shall be citizens of the United States.

**SECTION 26. Boards and Commissions.** When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

Senator Robin Taylor  
March 16, 2000  
Page 2

Section 25 provides that department heads serve "at the pleasure of the governor." That phrase indicates an at-will employment relationship. However, section 25 also provides that "the head of each principal department shall be a single executive *unless otherwise provided by law.*" (emphasis added). If the legislature establishes a board or commission to head a department, the legislature can also provide in statute for the removal of that board or commission.

In at least one case, under Article III, section 26, the legislature has provided for a board to head a principal department. The Board of Education heads the Department of Education and Early Development. AS 14.07.010. Members of the Board of Education serve at the pleasure of the Governor. AS 14.07.115.

Arguably the legislature could by statute provide for a board or commission to head the department of law, and specify that the members of the board or commission may only be terminated for cause. However, as long as the attorney general is a single executive at the head of the department of law, I believe it would require a constitutional amendment to make the attorney general terminable only for cause.

#### **Statutory Powers of Attorney General in Other States**

The powers and duties of the attorney general are analyzed at some length in *State v. Breeze*, 873 P.2d 627, 632-34 (Alaska App. 1994). Based on that case, it appears that the effect of the change in SB 286 to AS 44.23.020(b)(7), removing the phrase "or which usually pertain to the office of attorney general in a state," would be to remove the common law powers of the attorney general, and limit him to the powers granted by statute. That case also compares the current status of Alaska's attorney general with that of New York's attorney general. In New York, the powers of the elected attorney general are limited to those granted in statute, and not supplemented by the common law. *Id.* at 635. Still, the statutory duties of New York's attorney general are quite broad. See 5 Executive Law sec. 63 (copy attached).

There may be other states which have taken an approach similar to New York's; if you would like me to identify those states and the respective powers and duties of the attorney general in each, let me know.

I hope this is helpful.

KLK:glc:jr  
00-129.glc

Enclosure

## Annotations:

Power to appoint public officer for term commencing at or after expiration of term of appointing officer or body. 75 ALR2d 1277.

## § 62. Assistants

1. The attorney-general may appoint such assistant attorneys-general, deputy assistant attorneys-general and attorneys as he may deem necessary and fix their compensation within the amounts appropriated therefor. Whenever deputy or deputy attorney-general is referred to or designated in any law, contract or document such references or designations shall be deemed to refer to and include assistant attorneys-general, deputy assistant attorneys-general or attorneys appointed by the attorney-general.

## HISTORY:

- Add, L. 1951, ch 800, § 1, eff July 1, 1951, with substance transferred from § 61, Sub 1, formerly entire section, so numbered sub 1, L. 1962, ch 654, § 1, eff April 19, 1962.  
Sub 2, add, L. 1962, ch 654, § 1; repealed, L. 1966, ch 391, § 4, eff June 1, 1966.

## NOTES:

## Repeal Notes:

[1966, ch 391] The purpose of this act was to provide workmen's compensation coverage for volunteers duly accepted in State service. The act repealed sections of the Education, Executive and Mental Hygiene Laws providing special authority to provide coverage for volunteers. Such special provisions are unnecessary as a result of this general law.

## CROSS REFERENCES:

This section referred to in §§ 70, 73.  
Powers and Duties of deputies, generally, CLS Pub O § 9.

## FEDERAL ASPECTS:

Assistant Attorneys General of the United States, 28 USCS § 506.

## RESEARCH REFERENCES AND PRACTICE AIDS:

96 NY Jur 2d, State of New York § 25.  
7 Am Jur 2d, Attorney General § 10.  
63A Am Jur 2d, Public Officers and Employees §§ 567-577.

## Annotations:

Liability of clerk of court, county clerk or prothonotary, or surety on bond, for negligent or wrongful acts of deputies or assistants. 71 ALR2d 1140.

## CASE NOTES

The scheme of the statute is the payment by the county of expenses of state officers in the discharge of the county functions. If the expenses of special deputies assigned to such duties are covered by appropriations, their allowance by the attorney-general is final, and the duty of the county is absolute to make restitution of the quota expended for its benefit; but if the expenses of special deputies are not covered by appropriations allowance by the attorney-general is not within his authority and is ineffective to impose, without restraint or limitation, a charge upon the county. A charge in such circumstances, like other county

charges, is subject to audit by the county officers and rejection if excessive. *People ex rel. Rand v Craig* (1921) 231 NY 216, 131 NE 894.

Assistant Attorneys-General, as members of the exempt class of the civil service, do not hold their positions by right of entitlement but, rather, at the pleasure of the Attorney-General. *De Lucia v Lefkowitz* (1978, 3d Dept) 62 App Div 2d 674, 406 NYS2d 150, aff'd (1979) 48 NY2d 901, 424 NYS2d 897, 400 NE2d 1349.

An Assistant Attorney-General, who was suspended without pay following his indictment for perjury and bribe receiving and who was a veteran

of the armed forces, is not entitled to a hearing pursuant to § 75(1)(b) of the Civil Service Law for, while that statute requires that a veteran be given a hearing, it excepts a person who holds the position of "deputy" and Assistant Attorneys-General are deputies within the meaning of paragraph (b); sections 62 and 63 of the Executive Law contemplate delegation of the Attorney-General's authority to Assistant Attorneys-General. In addition, the general nature of the position—the responsibilities, duties and functions—dictates that Assistant Attorneys-General be held to be deputies of the Attorney-General. *De Lucia v Lefkowitz* (1978, 3d Dept) 62 App Div 2d 674, 406 NYS2d 150, aff'd (1979) 48 NY2d 901, 424 NYS2d 897, 400 NE2d 1349.

In proceeding brought by trustees for construction of will, Attorney General, who appeared in the proceeding on behalf of the ultimate charitable beneficiaries, was not entitled to an allowance for attorney fees out of the general estate assets which were the subject of the construction proceeding. In

*re Estate of Dow* (1977) 90 Misc 2d 950, 396 NYS2d 979, aff'd without op. sub nom. *In re Marine Midland Bank-Rochester* (1978, 4th Dept) 60 App Div 2d 985, 411 NYS2d 832.

Where there was no evidence whether the attorney-general acted under this section or under former § 65 (now § 67) in appointing a deputy attorney, the salary of the deputy was not exempt from the federal income tax where he had no position of permanent or continuous tenure and was free to carry on concurrently his general law practice. *Commissioner v Murphy* (1934, CA2) 70 F2d 790, 14 AFTR 194, cert den (1934) 293 US 596, 79 L Ed 690, 55 S Ct 111.

In light of the Pub Off § 9, it seems probable that deputies whose appointment is authorized by this section are the regular members of the staff of the attorney-general. *Commissioner v Murphy* (1934, CA2) 70 F2d 790, 14 AFTR 194, cert den (1934) 293 US 596, 79 L Ed 690, 55 S Ct 111.

## § 63. General duties

The attorney-general shall:

1. Prosecute and defend all actions and proceedings in which the state is interested, and have charge and control of all the legal business of the departments and bureaus of the state, or of any office thereof which requires the services of attorney or counsel, in order to protect the interest of the state, but this section shall not apply to any of the military department bureaus or military offices of the state. No action or proceeding affecting the property or interests of the state shall be instituted, defended or conducted by any department, bureau, board, council, officer, agency or instrumentality of the state, without a notice to the attorney-general apprising him of the said action or proceeding, the nature and purpose thereof, so that he may participate or join therein if in his opinion the interests of the state so warrant.
2. Whenever required by the governor, attend in person, or by one of his deputies, any term of the supreme court or appear before the grand jury thereof for the purpose of managing and conducting in such court or before such jury criminal actions or proceedings as shall be specified in such requirement; in which case the attorney-general or his deputy so attending shall exercise all the powers and perform all the duties in respect of such actions or proceedings, which the district attorney would otherwise be authorized or required to exercise or perform; and in any of such actions or proceedings the district attorney shall only exercise such powers and perform such duties as are required of him by the attorney-general or the deputy attorney-general so attending. In all such cases all expenses incurred by the attorney-general, including the salary or other compensation of all deputies employed, shall be a county charge.
3. Upon request of the governor, comptroller, secretary of state, commissioner of transportation, superintendent of insurance, superintendent of

banks, commissioner of taxation and finance or commissioner of motor vehicles, or the head of any other department, authority, division or agency of the state, investigate the alleged commission of any indictable offense or offenses in violation of the law which the officer making the request is especially required to execute or in relation to any matters connected with such department, and to prosecute the person or persons believed to have committed the same and any crime or offense arising out of such investigation or prosecution or both, including but not limited to appearing before and presenting all such matters to a grand jury.

4. Cause all persons indicted for corrupting or attempting to corrupt any member or member-elect of the legislature, or the commissioner of general services, to be brought to trial.

5. When required by the comptroller or the superintendent of public works, prepare proper drafts for contracts, obligations and other instruments for the use of the state.

6. Upon receipt thereof, pay into the treasury all moneys received by him for debts due or penalties forfeited to the people of the state.

7. He may, on behalf of the state, agree upon a case containing a statement of the facts and submit a controversy for decision to a court of record which would have jurisdiction of an action brought on the same case. He may agree that a referee, to be appointed in an action to which the state is a party, shall receive such compensation at such rate per day as the court in the order of reference may specify. He may with the approval of the governor retain counsel to recover moneys or property belonging to the state, or to the possession of which the state is entitled, upon an agreement that such counsel shall receive reasonable compensation, to be fixed by the attorney-general, out of the property recovered, and not otherwise.

8. Whenever in his judgment the public interest requires it, the attorney-general may, with the approval of the governor, and when directed by the governor, shall, inquire into matters concerning the public peace, public safety and public justice. For such purpose he may, in his discretion, and without civil service examination, appoint and employ, and at pleasure remove, such deputies, officers and other persons as he deems necessary, determine their duties and, with the approval of the governor, fix their compensation. All appointments made pursuant to this subdivision shall be immediately reported to the governor, and shall not be reported to any other state officer or department. Payments of salaries and compensation of officers and employees and of the expenses of the inquiry shall be made out of funds provided by the legislature for such purposes, which shall be deposited in a bank or trust company in the names of the governor and the attorney-general, payable only on the draft or check of the attorney-general, countersigned by the governor, and such disbursements shall be subject to no audit except by the governor and the attorney-general. The attorney-general, his deputy, or other officer, designated by him, is empowered to subpoena witnesses, compel their attendance, examine them

under oath before himself or a magistrate and require that any books, records, documents or papers relevant or material to the inquiry be turned over to him for inspection, examination or audit, pursuant to the civil practice law and rules. If a person subpoenaed to attend upon such inquiry fails to obey the command of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall, without reasonable cause, refuse to be sworn or to be examined or to answer a question or to produce a book or paper, when ordered so to do by the officer conducting such inquiry, he shall be guilty of a misdemeanor. It shall be the duty of all public officers, their deputies, assistants and subordinates, clerks and employees, and all other persons, to render and furnish to the attorney-general, his deputy or other designated officer, when requested, all information and assistance in their possession and within their power. Each deputy or other officer appointed or designated to conduct such inquiry shall make a weekly report in detail to the attorney-general, in form to be approved by the governor and the attorney-general, which report shall be in duplicate, one copy of which shall be forthwith, upon its receipt by the attorney-general, transmitted by him to the governor. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any person other than the governor or the attorney-general the name of any witness examined or any information obtained upon such inquiry, except as directed by the governor or the attorney-general, shall be guilty of a misdemeanor.

9. Bring and prosecute or defend upon request of the industrial commissioner or the state division of human rights, any civil action or proceeding, the institution or defense of which in his judgment is necessary for effective enforcement of the laws of this state against discrimination by reason of age, race, creed, color or national origin, or for enforcement of any order or determination of such commissioner or division made pursuant to such laws.

10. Prosecute every person charged with the commission of a criminal offense in violation of any of the laws of this state against discrimination because of race, creed, color, or national origin, in any case where in his judgment, because of the extent of the offense, such prosecution cannot be effectively carried on by the district attorney of the county wherein the offense or a portion thereof is alleged to have been committed, or where in his judgment the district attorney has erroneously failed or refused to prosecute. In all such proceedings, the attorney-general may appear in person or by his deputy or assistant before any court or any grand jury and exercise all the powers and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform.

11. Prosecute and defend all actions and proceedings in connection with safeguarding and enforcing the state's remainder interest in any trust

which meets the requirements of subparagraph two of paragraph (b) of subdivision two of section three hundred sixty-six of the social services law.

12. Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person.

In connection with any such application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Such authorization shall not abate or terminate by reason of any action or proceeding brought by the attorney general under this section.

13. Prosecute any person for perjury committed during the course of any investigation conducted by the attorney-general pursuant to statute. In all such proceedings, the attorney-general may appear in person or by his deputy or assistant before any court or any grand jury and exercise all the powers and perform all the duties necessary or required to be exercised or performed in prosecuting any such person for such offense.

\*[14]15. In any case where the attorney general has authority to institute a civil action or proceeding in connection with the enforcement of a law of this state, in lieu thereof he may accept an assurance of discontinuance of any act or practice in violation of such law from any person engaged or who has engaged in such act or practice. Such assurance may include a stipulation for the voluntary payment by the alleged violator of the reasonable costs and disbursements incurred by the attorney general during the course of his investigation. Evidence of a violation of such assurance shall constitute prima facie proof of violation of the applicable law in any civil action or proceeding thereafter commenced by the attorney general.

\*The bracketed designation has been inserted by the Publisher.

## HISTORY:

Add, L. 1951, ch 800, § 1, eff July 1, 1951, with substance transferred from § 62.  
 Sub 3, add, L. 1965, ch 790, § 1; amd, L. 1968, ch 420, § 103, L. 1969, ch 814, § 1, eff May 22, 1969.  
 Former sub 3, amd, L. 1955, ch 586, § 1, L. 1956, ch 118, § 1; repeated, L. 1965, ch 790, § 1, eff July 15, 1965.  
 Sub 4, amd, L. 1962, ch 60, § 12, eff Feb 27, 1962.  
 Sub 7, amd, L. 1962, ch 310, § 129, eff Sept 1, 1963.  
 Sub 8, amd, L. 1977, ch 451, § 5, eff July 19, 1977.  
 Sub 9, amd, L. 1962, ch 165, § 3, L. 1962, ch 562, § 1, L. 1963, ch 589, § 1, L. 1969, ch 359, § 1, eff May 2, 1969.  
 Sub 11, add, L. 1994, ch 170, § 455, eff June 9, 1994, deemed eff April 1, 1994 (see 1994 note below).  
 Former sub 11, add, L. 1954, ch 698, § 2; repeated, L. 1988, ch 108, § 1, eff Jan 1, 1989.  
 Sub 12, add, L. 1956, ch 592, § 1; amd, L. 1958, ch 84, § 1, L. 1958, ch 175, § 1, L. 1959, ch 242, § 1, L. 1962, ch 310, § 130, L. 1965, ch 666, § 1, L. 1967, ch 680, § 33, L. 1970, ch 44, § 1, L. 1975, ch 115, § 1, L. 1977, ch 539, § 1, L. 1981, ch 476, § 1, eff July 7, 1981.  
 Sub 12, second undesignated par, amd, L. 1985, ch 86, § 1, eff May 14, 1985.  
 Sub 13, add, L. 1958, ch 35, § 1, eff Feb 17, 1958.  
 Sub [14]15, add, L. 1962, ch 743, § 1; amd, L. 1982, ch 656, § 1, eff July 22, 1982, applicable to all assurances of discontinuance entered into on or after the effective date.

## NOTES:

## Editor's Notes:

- Laws 1967, ch 680, § 148, eff Sept 1, 1967, provides as follows:  
 § 148. Except as otherwise provided in section one hundred forty five of this act [amending Correction Law § 230-a], the provisions of this act do not apply to or govern the prosecution, conviction or punishment for any offense committed prior to the effective date of this act. Such an offense must be prosecuted and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this act had not been enacted.  
 Laws 1994, ch 170, § 564, sub 57, para (d), (f), (g), eff June 9, 1994, provides as follows:  
 § 564. This act shall take effect immediately provided, however, that:  
 57. The provisions of sections four hundred forty-seven through four hundred seventy-two of this act shall be deemed to have been in full force and effect on and after April 1, 1994, provided that:  
 (d) nothing contained in sections four hundred forty-seven through four hundred seventy-two of this act shall be deemed to affect the application, qualification, expiration or repeal of any provision of law amended by any of such sections and such provisions shall be applied or qualified or shall expire or be deemed repealed in the same manner, to the same extent and on the same date as the case may be as otherwise provided by law, except that paragraph (e) of subdivision 2 of section 365-a of the social services law, as amended by chapter 59 of the laws of 1993 and section four hundred fifty-eight of this act, shall remain in full force and effect, as amended, notwithstanding any previously enacted provision of law to the contrary, and except as provided for in sections four hundred sixty-two and four hundred sixty-three of this act;  
 (f) the commissioners of health and social services and any appropriate council may take any steps necessary to implement sections four hundred forty-seven through four hundred seventy-two of this act prior to its effective date;  
 (g) the provisions hereof shall become effective notwithstanding the failure of the commissioners of health and social services or any appropriate council to promulgate regulations implementing sections four hundred forty-seven through four hundred seventy-two of this act.

100 Somerset St., Ste. 800  
 Lowell, MA 01850

Mark K. Johnson  
13631 Windward Circle  
Anchorage, Alaska 99516  
907-345-3850

February 17, 2000

Senator Robin Taylor  
Chairman, Judiciary Committee  
Alaska State Senate  
State Capitol Building  
Juneau, Alaska 99811

Dear Chairman Taylor:

It is recommended that the Judiciary Committee consider adding the following language to SJR 14, in lieu of the material presently contained in the proposed Section 28(c) of Article III (See lines 23 through 26 on page 2):

The attorney general is the legal officer of the state and shall have duties and powers provided by law.

This language is identical to language contained in the Montana Constitution. The single sentence captures the obligation to the state and citizens discussed by the Committee on February 9<sup>th</sup> and also assures appropriate Legislative control over the duties and powers of the position. The proposed language reflects a preference for simplicity in a constitutional provision.

The existing language of SJR 14 could be interpreted as setting out broader duties and powers for the attorney general than currently exist under Alaska law. Listing specific duties and powers in the constitution could lead to the conclusion that the attorney general's authority in the identified areas is broad and not subject to limitation or review. In contrast, at present the attorney general is not a constitutional officer and must base authority to act on the governor's constitutional power to execute the law or statutes such as AS 44.23.020. The proposed language would preserve Legislative control over the attorney general's powers and duties.

The Committee should understand and consider that the language providing that the attorney general "...is the legal officer of the state...", may have the effect of vesting the holder of the office with a new sense of independence in determining what may be in the best interests of the state. In this regard the Committee may want to reflect on the proposed language in connection

in 14  
SB 2016

with Article I, Section 2 of the Alaska Constitution, which provides that: "All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole." When read together, I believe that the two provisions achieve the result sought by the Committee.

Under the proposed language the attorney general may assume a different role in state government than if the constitution were to provide that "...the attorney general shall be the legal adviser of the state officers." This latter language is found in the constitutions of Utah and Washington and seems to lack the notion of obligation to the state and citizens sought by the Committee. Discussion on this point may be appropriate.

If I can provide further assistance to the Committee on this topic, please let me know.

Sincerely,

Mark K. Johnson

Mark K. Johnson  
13631 Windward Circle  
Anchorage, Alaska 99516  
907-345-3850

RECEIVED  
JAN 24 2000

Ans'd.....

January 19, 2000

The Honorable Robin Taylor  
Alaska State Senate  
State Capitol Building  
Juneau, Alaska 99811

Dear Robin:

Enclosed is a copy of the recommendations of the subcommittee which reviewed the Department of Law for the Commission on Privatization, along with the Department's response and some of the appendices.

I do not take the Department's response very seriously for one paramount reason: The Department is unable as an institution to view itself critically and objectively. The Department consists almost entirely of career employees with a uniform political philosophy and close loyalty to Bruce Botelho. Mr. Botelho has hired a good number of these employees and has the ability to discharge any attorney at any time for pretty much any (or no) reason.

At the risk of repeating myself: The subcommittee found, and the Department reluctantly agreed that the Attorney General is NOT a constitutional officer and that Legislature, by statute, may define the role and responsibilities of the head of the Department of Law.

The subcommittee drafted a proposed amendment to AS 44.23.010 which would limit to some degree the scope of the Attorney General's powers and clarify that his obligation as a legal advisor runs to the State of Alaska, not "the governor and other state officers." The draft legislation would also put into law that the Legislative power to make appropriations constrains and limits the Attorney General's authority to settle cases.<sup>1 2</sup> Finally, the draft legislation would

---

<sup>1</sup> The power to settle litigation in my view poses great danger to the State and is the source of considerable mischief by this and previous Attorney Generals. As a recent example, as I understand it an attorney with the State with knowledge of the World Plus Travel scandal brought litigation against the State in connection with her discharge but that litigation was quickly settled. Through settlement, the State has the ability to quickly close and limit the potential for embarrassment from a variety of problems.

<sup>2</sup> Please note that this legislation does not address the authority of the Attorney General to enter into settlements of Alaska's anti-trust laws under Title 45.

25286

remove language which can be interpreted to vest common law powers in the Attorney General. It is my belief, and a belief shared by the subcommittee, that the Attorney General's powers should be enumerated powers – not unlimited powers.

Once it is appreciated that the Legislature can define and control the scope and powers of the Attorney General, it is interesting to consider the effect of dissolution of the office of Attorney General and the entire Department of Law. The office of State Prosecutor and Department of Prosecution could be established, which would address only criminal matters. Individual executive departments could be given authority to retain and employ counsel for needed legal services. The Governor could hire Bruce Botelho as the Governor's lawyer, which is the present situation.

Interestingly enough, under this set-up, the departmental commissioner would retain control of the legal budget of the department and the traditional relationship between client and attorney would be brought back to state government. Counsel retained in this fashion would be subject to the direction of the client – not the Attorney General. I personally believe that this arrangement would produce better results for the State of Alaska as the focus would shift to the issues presented in litigation. I would guarantee that discussions between the Governor and his department heads which touched upon legal issues would be much more substantive.

I hope this information is interesting and useful to you. Please let me know if I can answer any questions. My home phone is listed above. My work phone is 273-5290, but I am not always able to discuss non-work related matters.

Sincerely,



Mark K. Johnson

Sec. 44.23.010. Attorney general.

The principal executive officer of the Department of Law is the attorney general.

Sec. 44.23.020. Duties; and powers; waiver of immunity.

(a) The attorney general is the legal advisor of the state, including the governor and other state officers.

(b) The attorney general shall

(1) bring, prosecute, and defend all necessary and proper actions in the name of the state for the collection of revenue;

(2) represent the state in all civil actions in which the state is a party;

(3) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;

(4) administer state legal services, including the furnishing of written legal opinions to the governor, the legislature, and all state officers and departments as the governor directs; and give legal advice on a law, proposed law, or proposed legislative measure upon request by the legislature or a member of the legislature;

(5) draft legal instruments for the state;

(6) make available a report to the legislature, through the governor, at each regular legislative session

(A) of the work and expenditures of the office; and

(B) on needed legislation or amendments to existing law;

(7) perform all other duties required by law (OR WHICH USUALLY PERTAIN TO THE OFFICE OF ATTORNEY GENERAL IN A STATE); and

(8) prepare, publish, and revise as it becomes useful or necessary to do so an information pamphlet on landlord and tenant rights and the means of making complaints to appropriate public agencies concerning landlord and tenant rights; the contents of the pamphlet and any revision shall be approved by the Department of Law, division of consumer protection, before publication.

(c) The Attorney General may, subject to the power of the legislature to make appropriations, settle actions, matters and prosecutions under subsection (b) in which the Attorney General represents the state and in which the state is a party:

(d) Before January 1, 1999, the attorney general may, in a case that involves the state's title to submerged lands, or in any case in which the state seeks to allocate fault to the federal government or a federal employee under AS 09.17.080, waive the state's immunity from suit in federal court provided under the Eleventh Amendment to the Constitution of the United States. The expiration on January 1, 1999, of the attorney general's authority to waive the state's Eleventh Amendment immunity does not affect existing waivers in ongoing cases.

## ARTICLE V

*Officers and Civil Departments*

Section 1. The comptroller and attorney-general shall be chosen at the same general election as the governor and hold office for the same term, and shall possess the qualifications provided in section 2 of article IV. The legislature shall provide for filling vacancies in the office of comptroller and of attorney-general. No election of a comptroller or an attorney-general shall be had except at the time of electing a governor. The comptroller shall be required: (1) to audit all vouchers before payment and all official accounts; (2) to audit the accrual and collection of all revenues and receipts; and (3) to prescribe such methods of accounting as are necessary for the performance of the foregoing duties. The payment of any money of the state, or of any money under its control, or the refund of any money paid to the state, except upon audit by the comptroller, shall be void, and may be restrained upon the suit of any taxpayer with the consent of the supreme court in appellate division on notice to the attorney-general. In such respect the legislature shall define his powers and duties and may also assign to him: (1) supervision of the accounts of any political subdivision of the state; and (2) powers and duties pertaining to or connected with the assessment and taxation of real estate, including determination of ratios which the assessed valuation of taxable real property bears to the full valuation thereof, but not including any of those powers and duties reserved to officers of a county, city, town or village by virtue of sections seven and eight of article nine of this constitution. The legislature shall assign to him no administrative duties, excepting such as may be incidental to the performance of these functions, any other provision of this constitution to the contrary notwithstanding.

Sec. 2. There shall be not more than twenty civil departments in the state government, including those referred to in this constitution. The legislature may by law change the names of the departments referred to in this constitution.

Sec. 3. Subject to the limitations contained in this constitution, the legislature may from time to time assign by law new powers and functions to departments, officers, boards, commissions or executive offices of the governor, and increase, modify or diminish their powers and functions. Nothing contained in this article shall prevent the legislature from creating temporary commissions for special purposes or executive offices of the governor and from reducing the number of departments as provided for in this article, by consolidation or otherwise.

Sec. 4. The head of the department of audit and control shall be the comptroller and of the department of law, the attorney-general. The head of the department of education shall be The Regents of the University of the State of New York, who shall appoint and at pleasure remove a commissioner of education to be the chief administrative officer of the department. The head of the department of agriculture and markets shall be appointed in a manner to be prescribed by law. Except as otherwise provided in this constitution, the heads of all other departments and the members of all boards and commissions, excepting temporary commissions for special purposes, shall be appointed by the governor by and with the advice and

consent of the senate and may be removed by the governor, in a manner to be prescribed by law.

Sec. 6. Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive; provided, however, that any member of the armed forces of the United States who served therein in time of war, who is a citizen or an alien lawfully admitted for permanent residence in the United States and a resident of this state and was honorably discharged or released under honorable circumstances from such service, shall be entitled to receive five points additional credit in a competitive examination for original appointment and two and one-half points additional credit in an examination for promotion or, if such member was disabled in the actual performance of duty in any war, is receiving disability payments therefor from the United States veterans administration, and his disability is certified by such administration to be in existence at the time of his application for appointment or promotion, he shall be entitled to receive ten points additional credit in a competitive examination for original appointment and five points additional credit in an examination for promotion. Such additional credit shall be added to the final earned rating of such member after he has qualified in an examination and shall be granted only at the time of establishment of an eligible list. No such member shall receive the additional credit granted by this section after he has received one appointment, either original entrance or promotion, from an eligible list on which he was allowed the additional credit granted by this section.

Sec. 7. After July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired.

ARTICLE VI

Judiciary

Section 1. a. There shall be a unified court system for the state. The state-wide courts shall consist of the court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court and the family court, as hereinafter provided. The legislature shall establish in and for the city of New York, as part of the unified court system for the state, a single, city-wide court of civil jurisdiction and a single, city-wide court of criminal jurisdiction, as hereinafter provided, and may upon the request of the mayor and the local legislative body of the city of New York, merge the two courts into one city-wide court of both civil and criminal jurisdiction. The unified court system for the state shall also include the district, town, city and village courts outside the city of New York, as hereinafter provided.

b. The court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court, the family court, the

courts  
other c

c. All  
court i  
the su  
of the  
civil a  
as ma  
state.  
the di  
proce:  
city o  
such c

Sec. 2  
the six  
expira  
supre  
The o  
years.

Five i  
shall l  
In cas  
appea  
assoc  
have  
court  
suffic

b. Wt  
the cc  
and d  
numb  
not m  
so de:  
supre  
court  
wher  
amon  
the cc  
The c  
of app  
expir

c. The  
of ca

STATE of Alaska, Appellant,  
v.  
Robert A. BREEZE, Appellee.  
Nos. A-1810, A-1818 and A-1819.  
Court of Appeals of Alaska.  
May 6, 1994.  
Rehearing Denied May 25, 1994.

Indictments were dismissed by the Superior Court, Third Judicial District, Anchorage, Joan Katz, J., on ground that special prosecutor had exceeded scope of authority granted by Attorney General, and state appealed. The Court of Appeals, Wolverton, District Court Judge, held that: (1) Attorney General had authority to appoint special prosecutor; (2) special prosecutor acted within the scope of his authority; and (3) in any event, special prosecutor acted with at least de facto authority and there was no basis for dismissal of indictments absent demonstration of resulting prejudice.

Order vacated and indictments reinstated.

1. Criminal Law  $\S$  1015

It was appropriate for Court of Appeals to resolve whether Attorney General had authority to appoint special prosecutor, though trial court chose not to reach the issue, where issue was fully briefed and argued before the trial court and on appeal.

2. Criminal Law  $\S$  1131(3)

While Court of Appeals will reverse trial court's factual determinations only if clearly erroneous, questions that involve application of legal rules to the facts are subject to the independent judgment of the Court of Appeals, which is to adopt the rule of law that is most persuasive in light of precedent, reason and policy.

3. Attorney General  $\S$  6

Appointment of special prosecutor by Attorney General as remedy to Attorney General's perceived conflict of interest was both appropriate and authorized pursuant to

statute; Attorney General is obligated under statute to investigate and prosecute law violations, and if Attorney General and Department of Law are disqualified, Attorney General is nevertheless "required by law" to ensure that investigation and prosecution are conducted by someone who is qualified, whether that person is denominated special counsel, special prosecutor, or some other title. AS 44.23.020, 44.23.020(b)(3, 7).

4. Attorney General  $\S$  6

State Constitution and applicable statutes did not express or imply restriction on Attorney General's authority to properly delegate certain duties of the office, by appointing special prosecutor, where Attorney General maintained appropriate supervision, direction and control over special prosecutor, who was required to submit claims for services to the Department of Law and who was subject to termination by the Attorney General at any time. Const. Art. 3,  $\S$  22; AS 44.17.010, 44.17.010, 44.23.020(b)(3, 7).

5. Attorney General  $\S$  6

Reading of statutory authorization for Department of Law operations suggests intent to leave offices and their functions broad, general and flexible, even when circumstances do not involve disqualification of Attorney General, and demonstrate that the legislature contemplated retention of services of counsel outside the Department of Law. AS 36.30.015, 36.30.850(b)(32), 44.23.050.

6. Attorney General  $\S$  6

Record did not show that Attorney General lacked consent of the principal so as to bar appointment of special prosecutor by Attorney General under common-law doctrine of delegatus non potest delegare.

7. Attorney General  $\S$  6

Special prosecutor hired by Attorney General did not exceed the scope of his authority in securing indictments of target of investigation; appointment letter authorized special prosecutor to investigate other related matters and to serve as special counsel in "other matters that may arise in the course of the investigation," and Attorney General made it clear that special prosecutor had

07  
1994  
873  
627

acted within the scope of authority intended. AS 44.23.020(h)(3).

#### 8. Attorney General $\Rightarrow$ 6

Person who was investigated by special prosecutor and against whom indictments returned did not have the same standing as the Attorney General to challenge whether special prosecutor exceeded the scope of his appointment by the Attorney General.

#### 9. Attorney General $\Rightarrow$ 6

Even if special prosecutor appointed by Attorney General were found to have technically exceeded the scope of his appointment, special prosecutor was a de facto officer and indictments obtained by him remained valid pursuant to that authority, absent showing of prejudice by the person indicted; special prosecutor had at least a fair color or right of title and acted for such length of time as to afford presumption of appointment, appointment process was reported publicly, target of investigation himself urged state to get on with the investigation, and questions regarding special prosecutor's authority had no demonstrated bearing on grand jury's determination to return indictments. AS 44.23.020.

David C. Stewart, Law Office of Hickey and Stewart, Anchorage, for appellant.

Douglas Pope, Wagstaff, Pope & Katcher, Anchorage, for appellee.

Before COATS, J., ANDREWS, Superior Court Judge,\* and WOLVERTON, District Court Judge.\*

#### OPINION

WOLVERTON, District Court Judge.

The issues presented in this appeal are whether, under the circumstances of this case, the State Attorney General had the authority to appoint a special prosecutor and, if so, whether the trial court was correct in dismissing indictments on the grounds that

\*Sitting by assignment made pursuant to article IV, section 16 of the Alaska Constitution.

1. The background is essentially not in dispute and is drawn largely from an affidavit submitted by Breeze's counsel as an offer of proof, and

the Special Prosecutor had exceeded the scope of the authority granted by the Attorney General. The case presents issues of first impression in Alaska. We find that the Attorney General had the authority to appoint a special prosecutor in this instance and that the trial court erred both in finding that the Special Prosecutor had exceeded the scope of his appointment and in dismissing the indictments on that ground. We therefore vacate the trial court's order and reinstate the indictments.

#### Background<sup>1</sup>

On January 25, 1990, the law firm of Boyko, Breeze and Flansburg filed a lawsuit on its own behalf against Hazama-Gumi, Ltd., a Japanese firm that had sought a contract to finance and build a major part of the Bradley Lake hydroelectric project. In that suit, JAN-90-718CI, Attorney Robert A. Breeze claimed that he had been working on a \$500,000 contingency fee basis for Hazama, which was to be paid if the firm won a no-bid contract for the project. Although Hazama dropped out of the process when the state rejected its financing plan and decided to use competitive bidding, Breeze claimed that Hazama later agreed to pay him for services, and he submitted an itemized breakdown of services and expenses in excess of \$200,000. The suit also demanded repayment of \$50,000 for various political contributions made on behalf of Hazama.

The civil suit against Hazama-Gumi attracted prosecutorial attention to potential violations of lobbying without registration and lobbying under an improper contingency fee arrangement. By November of 1990, the Chief Prosecutor for the Department of Law had commenced an inquiry into the matter.

However, in early November of 1990, Walter J. Hickel was elected Governor and shortly thereafter on December 11, 1990, he announced the appointment of Charles E. Cole as his attorney general. Edgar Paul

from the statement of facts that Breeze submitted in briefing to the trial court. Both the affidavits and statement of facts referenced several letters, newspaper articles, and contract documents.

#### STATE v. BREEZE

Cite as 873 P.2d 627 (Alaska App. 1994)

Boyko, a partner in the firm under investigation, had been involved in Hickel's gubernatorial campaign, and after the election he was named to the Governor's Department of Law transition team. It was Boyko, in fact, who recommended to Hickel that he appoint Cole as attorney general.

The relationships among Governor Hickel, Boyko, and Cole were significantly intertwined. Boyko had served as attorney general in Hickel's first administration in the 1960s. During the 1970s and 1980s, Cole and Boyko were private practitioners and had represented one another in litigation where the other had been named as a party. Further, Cole and Boyko had jointly represented several different clients, and Cole had represented Hickel while in private practice.

On December 6, 1990, Boyko apparently asked Governor Hickel to appoint a special prosecutor to expedite the criminal investigation involving his law firm. Boyko expressed his belief that the investigation was a politically motivated attempt to reduce his influence with the new administration and to deflect attention from his complaints about the prior administration's selection of a private law firm to litigate the Exxon Valdez claims on behalf of the state.

Three attempts were made to secure the services of a special prosecutor. Although Cole had tried to remove himself from the selection process to some degree by assigning the selection duties to his deputy, he

2. Attorney General Cole later set forth his recollection of the selection process in an affidavit, which states, in part, as follows:

1. Charles E. Cole, being first duly sworn, do hereby testify and state as follows:

1. I am currently attorney general for the State of Alaska, a position I have held since December, 1990.

2. Sometime in 1991—I believe in the spring—Edgar Paul Boyko, then a law partner with Robert Breeze, told me that he believed an investigation being conducted by the Department of Law into possible criminal actions of Mr. Breeze was motivated by criticisms which he, Edgar Paul Boyko, had made against the Department of Law concerning its selection of law firms to prosecute on behalf of the State the Exxon Valdez claims.

3. I assured Mr. Boyko that that was certainly not the case so far as I knew, that former Attorney General Doug Bailey had told me

stepped in and rejected the first candidate because the candidate had been a law partner of the prior administration's attorney general.<sup>3</sup> After the second and third candidates indicated that they had conflicts that prohibited them from taking the position, Breeze himself indicated that he wanted the state to get the investigation underway.

At the outset of the special counsel selection process, the Deputy Attorney General submitted a Request for Alternate Procurement, which was marked "confidential." In that document he stated that

this case involves investigation of individuals previously represented by both the Attorney General and the law firm with which the Deputy Attorney General was associated<sup>4</sup> until his employment with the Department of Law. Because of the inherent conflict of representation, the use of a special prosecutor has been deemed to be necessary. Due to the confidential nature of all criminal investigations, the department must limit its contacts with prospective outside counsel to an absolute minimum in order to protect the constitutional rights of the individuals involved in the matter under investigation. As such, the use of any form of open competitive procurement is impractical and contrary to the public interest.

The selection process ultimately resulted in the appointment of Anchorage attorney

about this investigation shortly after I was appointed Attorney General, and that so far as I was aware, the investigation had nothing to do with the criticisms of Mr. Boyko about the Department of Law.

4. On the other hand, I told Mr. Boyko that I wanted to be certain that the investigation being conducted by the Department of Law was impartial, and not motivated by Mr. Boyko's criticisms of the Department of Law, so I would appoint special counsel to conduct the investigation and to prosecute violations of criminal law which might develop from the investigation.

5. Initially I said that because of my personal and professional associations with Mr. Boyko, and to avoid possible public criticism that the selection by me of the special counsel was motivated by improper considerations, I would commit the selection of independent counsel to the Deputy Attorney General.

David Stewart as Special Counsel.<sup>3</sup> In his appointment letter dated April 15, 1991, Attorney General Cole advised Stewart that

This letter constitutes your appointment as Special Counsel to act on behalf of the State of Alaska to investigate whether any violations of law may have occurred in connection with the matters mentioned in the complaint filed in JAN-S90-718 Civil, a civil case filed by Boyko, Breeze, & Flansburg, et al., to collect fees allegedly owed for services rendered to Hazama-Gumi, Ltd., and to investigate such other related matters as may arise in the course of your investigation.

As Special Counsel, acting in an independent capacity and exercising your independent judgment, you are to direct all phases of the investigation, the filing of any charges you conclude from your investigation are warranted, and the prosecution of any such charges to their conclusion. You are also authorized, but are not required, to request the services of the Alaska State Troopers to assist you in the conduct of your investigation, and to retain such other attorneys and special services as you find warranted.

Enclosed are three copies of a State of Alaska Professional Services Contract for your signature setting forth and describing the terms and conditions embodied in this letter of appointment. Please sign and return two copies to the Department of Law.

3. In a continuing paragraph to the affidavit quoted in n. 2, *supra*, Attorney General Cole explained how the selection process finally resulted in the selection of Stewart as Special Prosecutor:

6. The initial nomination of independent counsel by the Deputy Attorney General, when it came to my attention, was—in my view—subject to possible criticism because either the independent counsel or the law firms with which he was associated had significant financial relationships with the Department of Law and therefore could be viewed as less than impartial. Another designation of special counsel was made, but the designee declined to act because of a perceived conflict of interest. Therefore, I elected to make the selection of the independent prosecutor myself and I eventually did select David Stewart because I viewed him as wholly impartial and competent to conduct the investigations and to pursue

The standard agreement form for professional services included, *inter alia*, the following provisions:

Article 5. Termination. The project director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. The State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

Article 7. No Additional Work or Material. No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

Article 8. Independent Contractor. The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

Article 13. Officials Not to Benefit. Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.<sup>4</sup>

Special Prosecutor Stewart directed the investigation and presented the matter before whatever criminal prosecutions he concluded were warranted.

4. An appendix to the standard agreement form included the following typed provision:

Article 1. The Services to be performed by the Contractor

Article 1.1 The Contractor, in the person of David C. Stewart, shall serve as Special Counsel on behalf of the State of Alaska in connection with the investigation relating to the complaint in JAN-90-718 C1, a civil case filed to collect fees for services from Hazama-Gumi, Ltd., and to other matters that may arise in the course of the investigation. The scope of Contractor's authority and services as Special Counsel are set out in the attached letter of appointment dated April 15, 1991, and incorporated by reference herein.

## STATE v. BREEZE

Cite as 873 P.2d 627 (Alaska App. 1994)

Alaska 631

fore a grand jury, which indicted Breeze on various charges in three separate cases.<sup>3</sup> Breeze entered pleas of not guilty to all of the charges, and he moved to dismiss the indictments on two grounds: that the Attorney General had no authority to appoint a special prosecutor, and that the Special Prosecutor had exceeded the scope of his authority. Breeze also alleged that the Attorney General's declaration of a conflict was merely a ruse to deflect the investigation from others and limit it to Breeze only; on the other hand, Breeze argued that if the Attorney General had a conflict, the conflict should have prohibited him from selecting a special prosecutor.

Breeze moved to depose a number of government officials, and the state moved to quash the subpoenas. The trial court quashed some of the subpoenas, held the subpoenas for Governor Mickel and the Lt. Governor in abeyance, and ordered Cole, Deputy Attorney General Blankenship, and Boyko to appear for an evidentiary hearing. The trial court then stayed its order pending appellate review. After this court denied the state's petition for review, the Alaska Supreme Court granted review and stayed the evidentiary hearing.

pending a determination by the superior court of whether the attorney general has the authority to appoint a special prosecutor, and if so, the circumstances under which such authority may be exercised. If, after these questions are determined, an evidentiary hearing is necessary to facilitate the disclosure of relevant information, such a hearing should be held.

Rather than reach the issue of whether and under what circumstances the attorney general has the authority to appoint a special prosecutor, the trial court chose to resolve the question by ruling only on what it viewed as the "narrowest issue raised" and dismissed the indictments on its finding that the

Three indictments were returned by the grand jury against Attorney Robert Breeze, charging him as follows. In case JAN-S91-593CR, he was charged with two counts of securities violation AS 45.55.210, two counts of theft in the first degree, AS 11.46.120, a count of scheming to defraud, AS 11.46.600(A)(2), two counts of misapplication of property, AS 11.46.620(A), and a count of forgery in the first degree, AS 11.46.

Special Prosecutor had "exceeded the scope of the authority vested in him by the appointment letter."

Following the trial court's order, the state moved for reconsideration and submitted a letter from the Attorney General, which read as follows:

I have reviewed my letter of April 15, 1991 appointing David Stewart Special Counsel to investigate the Breeze matter. I have also reviewed the decision of Judge Katz distributed on February 1, 1991 that interpreted that appointment.

Mr. Stewart's performance under that appointment resulted in three indictments being returned against Mr. Breeze. His investigation and assistance to the grand jury in the return of those indictments is within the scope of Mr. Stewart's authority that I intended him to have when I appointed him to be Special Counsel on April 15, 1991.

The trial court denied the state's motion for reconsideration, and the state appealed.

#### The Attorney General's Authority to Appoint a Special Prosecutor

[1, 2] Although the trial court chose not to reach the issue, we believe that it is appropriate for us to resolve whether the attorney general has the authority to appoint a special prosecutor. The issue was fully briefed and argued before the trial court and in this appeal. See *Lion Corp. v. Air Logistics of Alaska*, 787 P.2d 109, 115 (Alaska 1990); *State v. Northwestern Construction, Inc.*, 741 P.2d 235, 239 (Alaska 1987). Further, while we will reverse a trial court's factual determinations only if clearly erroneous, questions that involve application of legal rules to the facts are subject to our independent judgment. *Jones v. Jones*, 835 P.2d 1173, 1175 (Alaska 1992). As to questions of law, we are

SUCHAN1). In case JAN-S91-6507CR, he was charged with a count of misapplication of property, AS 11.46.620(A) and a count of scheming to defraud, AS 11.46.620(A)(2). In case JAN-S91-7934CR, Breeze was charged with a count of theft in the first degree, AS 11.46.120, a count of scheming to defraud, AS 11.46.600(A)(2) and a count of misapplication of property, AS 11.46.620(A).



broad and general and flexible enough so they can be adjusted to meet changing times and changing circumstances.

3 Proceedings of the Alaska Constitutional Convention (PACC) 2003 (January 13, 1956).

[5] A reading of the statutory authorization for other Department of Law operations suggests an intent to leave offices and their functions broad, general, and flexible, even when circumstances do not involve a disqualification of the attorney general. For example, AS 44.23.050 provides that

If a matter in which the state is interested is pending in a court distant from the capital, and it is necessary for the state to be represented by counsel, the attorney general, with the approval of the governor, may engage one or more attorneys to appear for the attorney general. The attorney general may pay for these services out of appropriations for the attorney general's office.

Additionally, the fact that the legislature provided a mechanism in AS 36.30.015 for state agencies to procure personal services contracts demonstrates that the legislature contemplated retention of the services of counsel outside of the Department of Law.<sup>4</sup>

In *Public Defender Agency v. Superior Court, Third Judicial Dist.*, 534 P.2d 947, 950 (Alaska 1975), the Alaska Supreme Court explained that "[g]enerally, an attorney general has those powers which existed at common law except where they are limited by statute or conferred upon some other state official." In describing the breadth of this authority, the supreme court went on to state that

Under the common law, an attorney general is empowered to bring any action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state's litigation which he thinks best. This discretionary control over the legal business of the state, both civil and crim-

8. AS 36.30.850(b)(32) now provides that the procurement code does not apply to contracts that are between the Department of Law and attorneys who are not employed by the state and that are for the review or prosecution of possible violations of the criminal

nal, includes the initiation, prosecution and disposition of cases.

*Id.* (citations omitted).

In *Florida ex rel Shevin v. Exxon Corp.*, 526 F.2d 268, 268 (5th Cir.), cert. denied, 429 U.S. 829, 97 S.Ct. 88, 50 L.Ed.2d 92 (1976), the court discussed the evolution of the office of the common law attorney general, and explained that as chief legal representative of the king, the

attorney general was clearly subject to the wishes of the crown, but, even in those times, the office was also a repository of power and discretion; the volume and variety of legal matters involving the crown and the public interest made such limited independence a practical necessity. Transposition of the institution to this country, where governmental initiative was diffused among the officers of the executive branch and the many individuals comprising the legislative branch, could only broaden this area of the attorney general's discretion.

(Footnotes omitted).

Elaborating on the same point made by the Alaska Supreme Court in *Public Defender Agency*, the court in *Shevin* went on to explain that

The attorneys general of our states have enjoyed a significant degree of autonomy. Their duties and powers typically are not exhaustively defined by either constitution or statute but include all those exercised at common law. There is and has been no doubt that the legislature may deprive the attorney general of specific powers; but in the absence of such legislative action, he typically may exercise all such authority as the public interest requires. And the attorney general has wide discretion in making determination as to the public interest.

*Id.* (footnotes omitted).

As previously stated, neither the Alaska Constitution nor the legislation establishing

law of the state in situations where the attorney general concludes that an actual or potential conflict of interest makes it inappropriate for the Department of Law to review or prosecute the possible violations.

## STATE v. BREEZE

Cite as 873 P.2d 627 (Alaska App. 1994)

the Department of Law limits or deprives the attorney general of the power to appoint a special prosecutor when, in the wide discretion granted, the attorney general believes such an appointment to be in the public interest. We hold that the proper appointment of a special prosecutor in circumstances where the attorney general believes he and the Department of Law are disqualified by a conflict of interest is within the attorney general's discretionary control over the legal business of the state.

[6] With respect to the argument that the appointment was somehow barred by the common law doctrine of *delegatus non potest delegare*, we are unable to find from the record and applicable law that the Attorney General did not have the consent of the principal to make a proper delegation to a special prosecutor.

#### The Scope of the Special Prosecutor's Authority

[7] Although we have concluded that the court erred in its factual finding that the Special Prosecutor was not under the continuing supervision of the Attorney General, we nevertheless must address the trial court's legal conclusion that the Special Prosecutor exceeded the scope of his authority. In reaching this conclusion, the trial court apparently relied upon the argument made by Breeze that *Schumer v. Holtzman*, 60 N.Y.2d 46, 467 N.Y.S.2d 182, 454 N.E.2d 522 (1983) was controlling. We find that *Schumer* is distinguishable on several grounds, and that the trial court therefore erred in its legal conclusion as well.

*Schumer*, in fact, serves to highlight the difference between jurisdictions that have express constitutional or statutory limitations

Executive Law § 63 sets forth the general duties of the New York Attorney General, who is also an elected constitutional officer under Article 5 § 1; section 63 reads as follows:

#### General duties

The attorney general shall:

1. Prosecute and defend all actions and proceedings in which the state is interested, and have charge and control of all the legal business of the departments and bureaus of the state, or of any office thereof which requires the services of attorney or counsel, in order to protect the interest of the state....

on the attorney general's authority to appoint a special prosecutor, and those that do not. In *Schumer*, the New York Court of Appeals upheld the lower court's decision that the district attorney had improperly appointed a special prosecutor to investigate and prosecute an individual whom the district attorney, Holtzman, had run against for a congressional seat. *Schumer*, 467 N.Y.S.2d at 183-84, 454 N.E.2d at 523.

In contrast to the Alaska attorney general who functions with the broad powers and duties as explained in *Public Defender Agency*, the district attorneys in New York "do not hold a common law office; and they have no powers but such as can be found written in the statute book." *People v. Corning*, 2 N.Y. 9, 18 (1849).

The district attorney in *Schumer* was an elected constitutional officer who was directed by statute to prosecute crimes that were recognized by the courts in the county for which she had been elected to serve. *Schumer*, 467 N.Y.S.2d at 183-84, 454 N.E.2d at 523-24 (citing County Law § 700(1), McKinney's Consolidated Laws of New York (MCL)). County Law § 930 authorized the district attorney to appoint assistant district attorneys to serve at the pleasure of the district attorney. *Id.* 467 N.Y.S.2d at 184, 454 N.E.2d at 524. However, unlike in Alaska, the New York county laws included a specific statutory scheme for the appointment of a special prosecutor. In the event that the district attorney were to become disabled or disqualified, the statutory scheme provided for court appointment of a special district attorney who would supersede the district attorney. *Id.* (citing County Law § 701). Further, under subdivision 2 of section 63 of the Executive Law<sup>9</sup> the governor

2. Whenever required by the governor, attend in person, or by one of his deputies, any term of the supreme court or appear before the grand jury thereof for the purpose of managing and conducting in such court or before such jury criminal actions or proceedings as shall be specified in such requirement; in which case the attorney general or his deputy so attending shall exercise all the powers and perform all the duties in respect of such actions or proceedings, which the district attorney would otherwise be authorized or required to exercise or perform; and in any of such actions or

of New York has the power to order the attorney general to supersede a district attorney.

Schumer was elected to a congressional seat formerly held by Holtzman. *Id.* 467 N.Y.S.2d at 183-84, 454 N.E.2d at 523. After the United States Attorney investigated the Schumer campaign for possible violations and declined prosecution, Holtzman, who by then was elected as county district attorney, decided to pursue the matter. However, because she was concerned about charges of bias, she asked the governor of New York to order the attorney general to supersede her. *Id.*

After the governor refused her request, the district attorney apparently did not seek court appointment of a special prosecutor under § 701, but instead chose to bypass that provision by appointing a special prosecutor under § 930. *Id.* The terms of this appointment provided that the special prosecutor's decisions or actions would not be overridden by the district attorney, and that he could be removed from his duties only for disability or for "extraordinary impropriety," as opposed to removal at the pleasure of the district attorney as set forth in § 930. *Id.* 467 N.Y.S.2d at 184, 454 N.E.2d at 524. The court found this appointment to be invalid because "[s]uch a transfer may be accomplished only by executive or court order." *Id.* 467 N.Y.S.2d at 185, 454 N.E.2d at 525.

In Alaska, by contrast, there are no similar constitutional or statutory limitations regarding appointments of special prosecutors, and, as previously discussed, the Special Prosecutor appointed to investigate Breeze remained appropriately subordinate to the Attorney General.

The fact that the Special Prosecutor appointed to investigate Breeze remained subordinate to the Attorney General leads to our conclusion that the trial court erred in dismissing the indictments on the grounds that the Special Prosecutor somehow exceeded the scope of his authority. First, we believe the trial court erred in adopting such a re-

proceedings the district attorney shall only exercise such powers and perform such duties as are required of him by the attorney-general or the deputy attorney-general so attending.

strictive interpretation of the phrase from the Special Prosecutor's appointment letter that authorized him "to investigate such other related matters as may arise in the course of your investigation."

Because the authority for the appointment was derived from AS 44.23.020(b)(3), which required prosecution of "all cases involving state law," the term "related matters" could as well be interpreted to include all law violations by individuals under investigation. This is particularly true when the appointment letter is read together with the appendix to the standard agreement form entitled "Article I. The Services to be performed by the Contractor." Under Article I, Special Counsel was to investigate not only matters "in connection with the investigation relating to the complaint in JAN-90-718C1, a civil case filed to collect fees for services from Hazama-Gumi, Ltd.," but he was more broadly authorized to serve as Special Counsel in "other matters that may arise in the course of the investigation...."

[8] Certainly the Attorney General, who was privy to the agreement that contracted the services of the Special Prosecutor and who authored the appointment letter, would have had some standing to challenge the Special Prosecutor for exceeding his authority; however, the Attorney General made it clear that the Special Prosecutor had acted within the scope of the authority intended. We find no basis to assume that Breeze had the same standing to challenge whether the Special Prosecutor exceeded the scope of his appointment.

[9] Even if the Special Prosecutor were found to have technically exceeded the scope of his appointment, absent a showing of prejudice by Breeze, the indictments would remain valid pursuant to the Special Prosecutor's authority as a *de facto* officer. See *People v. Davis*, 88 Mich.App. 514, 272 N.W.2d 707, 710 (1979).

In *Davis*, the county prosecuting attorney petitioned the court pursuant to statute for

N.Y. Executive Law § 61 (McKinney 1993).

appointment of a special prosecutor due to a conflict of interest he perceived regarding the close working relationship between his office and the sheriff's department whose deputy was the subject of investigation. The court appointed a special prosecutor who conducted an investigation and authorized issuance of warrants that charged the defendant with embezzlement and fraudulent conversion. *Id.* 272 N.W.2d at 708. The lower court later determined that because the circuit court was without authority to appoint a special prosecutor to appear in district court, it was necessary not only to set aside the appointment but also to dismiss the warrants. *Id.* at 709-10.

The appellate court agreed that the circuit court did not have the power to appoint a special prosecutor for the purposes requested. However, the appellate court held that the lower court erred in dismissing the warrants that were issued by the special prosecutor, relying on the *de facto* doctrine, which validates, on grounds of public policy and prevention of failure of public justice, the acts of officials who function under color of law. *Id.* at 710. The court in *Davis* quoted from 46 C.J. Officers, § 366 p. 1053, which read as follows:

A person will be held to be a *de facto* officer when, and only when, he is in possession, and is exercising the duties, of an office; his incumbency is illegal in some respect; he has at least a fair color of right or title to the office, or has acted as an officer for such a length of time, and under such circumstances of reputation or acquiescence by the public and public authorities, as to afford a presumption of appointment or election, and induce people, without inquiry, and relying on the supposition that he is the officer he assumes to be, to submit to or invoke his action; and, in some, although not all, jurisdictions, only when the office has a *de jure* existence.

We believe that the *de facto* doctrine is applicable under the circumstances, and that it requires reinstatement of the indictments against Breeze. The Special Prosecutor was investigating and prosecuting Breeze pursuant to the authority of the Attorney General,

derived from AS 44.23.020 and vested in him by his appointment.

Although we have found that the appointment and exercise of authority were proper, the result would be the same even if the trial court were correct that the incumbency was illegal in some respect; the Special Prosecutor had "at least a fair color or right of title," and "acted as an officer for such a length of time, and under such circumstances of reputation or acquiescence by the public and public authorities, as to afford a presumption of appointment." *Davis*, 272 N.W.2d at 710.

The process of appointing a special prosecutor was reported publicly and conducted at the request of Hoyko, Breeze's law partner at the time. After Hoyko made this request to the Governor, the Attorney General, as chief legal advisor to the Governor, commenced the selection process. When difficulties arose in selecting a qualified person, Breeze himself discussed the selection process and urged the state to get on with the investigation. Thus, the Special Prosecutor had a fair color or right to title, and he acted under circumstances of reputation or acquiescence not only of public authorities and the public, but also by Breeze himself. The Special Prosecutor conducted an investigation, submitted regular reports to the Attorney General, and presented the matters to a grand jury under circumstances that induced people to submit to or invoke his action.

Questions regarding the Special Prosecutor's authority had no demonstrated bearing on the grand jury's determination to return indictments against Breeze. Even if the Special Prosecutor's incumbency were illegal in some respect, there was no basis for the dismissal of the indictments, since, in any case, his acts achieved *de facto* legitimacy. See *People v. Montoya*, 44 Colo.App. 234, 616 P.2d 156, 162 (1980). There is nothing in the record to show how Breeze could have been prejudiced by the appointment of a special prosecutor who was contractually bound by "all applicable federal or state laws regulating ethical conduct of public officers," and who presented the cases to a grand jury for review.

In summary, we find that the Attorney General had the authority to appoint the Special Prosecutor under the circumstances of this case. We also find that the Special Prosecutor acted within the scope of his authority.<sup>10</sup> Finally, we hold that the Special Prosecutor acted at least with *de facto* authority and that, absent any record demonstrating resulting prejudice, there was no basis for dismissal of the indictments. The

10. In light of the Attorney General's subsequent clarification regarding the Special Prosecutor's scope of authority, it is apparent that the Special

order of the trial court is therefore VACATED, and the indictments are reinstated.

BRYNER, C.J., and MANNHEIMER, J., not participating.



Prosecutor would not now be prohibited from further prosecuting these matters in any event.

DILLINGHAM v. CH2M HILL NORTHWEST

Ch2m 873 P.2d 1271 (Alaska 1994)

Alaska 1271

CITY OF DILLINGHAM, an Alaska  
Municipal Corporation,  
Petitioner,

v.

CH2M HILL NORTHWEST,  
INC., Respondent.

No. S-5230.

Supreme Court of Alaska.

May 6, 1994.

Construction contractor brought action against city, seeking increased costs in connection with alleged differing site conditions regarding construction of sewage treatment facility. City filed third-party complaint against engineering firm retained to prepare environmental plan related to treatment system, alleging breach of contract, breach of duty of care, and breach of fiduciary duty. The Superior Court, Third Judicial District, Anchorage, Beverly W. Cutler, J., granted partial summary judgment for firm on claims for breach of contract and breach of fiduciary duty. City petitioned for review. The Supreme Court, Rabinowitz, J., held that: (1) legislature's general goal in enacting statute generally rendering void contractual provisions purporting to indemnify promisee against liability for damages caused by promisee's civil negligence or willful misconduct was to provide remedies for all wronged persons, as opposed to only governmental indemnitees; (2) exculpatory clause that limits liability for party's "negligent acts, errors, or omissions" should be construed to limit liability for negligent acts, errors or omissions only; (3) statute generally rendering void contractual provisions purporting to "indemnify" promisee prohibits limitation of liability clauses; and (4) that statute applies to clause that is questioned under it, regardless of whether indemnification has been sought.

Reversed.

Appeal and Error ⇨893(1)

Interpretation of statute and related questions of interpretation of contractual

clause presented questions of law, which Supreme Court reviewed *de novo*.

2. Municipal Corporations ⇨250

While city was beneficiary or "promisee" of contract with engineering firm retained to prepare environmental plan related to sewage treatment system, city was "promisor" with regard to limitation of liability clause, as it was promising to limit firm's liability.

See publication Words and Phrases for other judicial constructions and definitions.

3. Indemnity ⇨3

Legislature's general goal in enacting statute generally rendering void contractual provisions purporting to indemnify "promisee" against liability for damages caused by promisee's civil negligence or willful misconduct was to provide remedies for all wronged persons, as opposed to only governmental indemnitees. AS 45.45.900.

4. Contracts ⇨206

Exculpatory clause that limits liability for party's "negligent acts, errors, or omissions" should be construed to limit liability for negligent acts, errors or omissions only, and clause therefore applies to breaches of contract and fiduciary duty only insofar as breaches are negligent.

See publication Words and Phrases for other judicial constructions and definitions.

5. Municipal Corporations ⇨250

Trial court correctly ruled that limitation of liability clause in contract between city and engineering firm, limiting liability for party's "negligent acts, errors, or omissions," applied to breaches of contract and fiduciary duty, but only insofar as breaches were negligent.

6. Contracts ⇨129(1)

Liability for knowing or bad faith breaches of contract can never be limited.

7. Indemnity ⇨3

Statute generally rendering void contractual provisions purporting to "indemnify" promisee against liability for damages caused by promisee's sole negligence or willful misconduct prohibits limitation of liability clause.

071  
 875  
 PACIFIC REPORTER  
 1994

**SB**

**294**

DRAFT HCS for CSSB294 ( )

**\*\* CHANGES \*\***

1. Changes the photograph requirement from two frontal photos to only one – requested by the Department;
2. Deletes the change in length of time an applicant's photograph is valid; from seven years back to the current requirement of 30 days – requested by the Department;
3. Deletes the requirement that the applicant submit a renewal form in person – requested by the Department;
4. Places the competency requirement back in statute and keeps the current definition of competency (AS 18.65.790(2)) – requested by the Department.

The bill sponsor, the Department of Public Safety and the NRA all support the changes proposed in the new draft CS (version-LS1543/K).

**DRAFT HCS CSSB 294 ( )**  
**SECTIONAL**

- Section 1-2** Deletes criminal offense of possession of a concealed handgun while in a local community with an opt-out ordinance.
- Section 3** Deletes statutory requirement that the application be executed under oath and changes the requirement from two photos to one photo.
- Section 4** Deletes requirement to list specific action type and caliber on permit.
- Section 5** Amends qualifications to obtain a permit to: "has successfully completed a handgun course."
- Section 6** Deletes warning that the application is executed under oath and changes the penalty for providing known false or inaccurate information from perjury to unsworn falsification
- Section 7** Retains requirement that the applicant demonstrate physical competence with a handgun; deletes the requirement for specific action type and caliber.
- Section 8** Repeals the requirement that a permit holder apply "in person" for a renewal; retains the requirement that a photograph be taken within the previous 30 days; changes the photo requirement from two photos to one photo.
- Section 9** Amends permit renewal process to allow an applicant to file for a renewal of the permit for up to 60 days after the expiration date of the permit.
- Section 10** Retains replacement of permit process to provide a photograph taken within the preceding 30 days; and changes the photo requirement from two photos to one photo.
- Section 11** Revocation of permit (no changes to current law).
- Section 12** Expands and better defines guidelines for recognition of permit holders from other jurisdictions and provides for a program for reciprocity with other states as approved by the Department of Public Safety.
- Section 13** Provides for an exception to expired permit penalty if the applicant has filed in a timely manner for a permit renewal and has not yet received the permit from the state of Alaska.
- Section 14** Deletes local opt-out provisions of municipal preemption statute.
- Section 15** Repeals sections to conform to the changes made throughout the bill.

1-LS1543K  
Luckhaupt  
4/17/00

HOUSE CS FOR CS FOR SENATE BILL NO. 294( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the possession of concealed handguns and to concealed  
2 handgun permits."

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

4 \* Section 1. AS 11.61.220(b) is amended to read:

5 (b) In a prosecution under (a)(1) of this section, it is an affirmative defense  
6 that the defendant, at the time of possession, was

7 (1) in the defendant's dwelling or on land owned or leased by the  
8 defendant appurtenant to the dwelling;

9 (2) actually engaged in lawful hunting, fishing, trapping, or other lawful  
10 outdoor activity that necessarily involves the carrying of a weapon for personal  
11 protection;

12 (3) the holder of a valid permit to carry a concealed handgun under  
13 AS 18.65.700 - 18.65.790 and [,] the weapon was a concealed handgun as defined in  
14 AS 18.65.790 [, AND THE POSSESSION DID NOT OCCUR IN A MUNICIPALITY

1 OR ESTABLISHED VILLAGE IN WHICH THE POSSESSION OF CONCEALED  
2 HANDGUNS IS PROHIBITED UNDER AS 18.65.780 - 18.65.785]; or

3 (4) considered a permittee under AS 18.65.748 and

4 [(A)] the weapon was a concealed handgun as defined in  
5 AS 18.65.790 [; AND

6 (B) THE POSSESSION DID NOT OCCUR IN A  
7 MUNICIPALITY OR ESTABLISHED VILLAGE IN WHICH THE  
8 POSSESSION OF CONCEALED HANDGUNS IS PROHIBITED UNDER  
9 AS 18.65.780 - 18.65.785].

10 \* Sec. 2. AS 11.61.220(d) is amended to read:

11 (d) In a prosecution under (a)(2) of this section, it is

12 (1) an affirmative defense that

13 (A) the defendant, at the time of possession, was the holder of  
14 a valid permit to carry a concealed handgun under AS 18.65.700 - 18.65.790  
15 or was considered a permittee under AS 18.65.748;

16 (B) the loaded firearm was a concealed handgun as defined in  
17 AS 18.65.790; and

18 (C) the possession occurred at a place designated as a restaurant  
19 for the purposes of AS 04.16.049 and the defendant did not consume  
20 intoxicating liquor at the place; [AND

21 (D) THE POSSESSION DID NOT OCCUR IN A  
22 MUNICIPALITY OR ESTABLISHED VILLAGE IN WHICH THE  
23 POSSESSION OF CONCEALED HANDGUNS IS PROHIBITED UNDER  
24 AS 18.65.780 - 18.65.785;]

25 (2) a defense that the defendant, at the time of possession, was on  
26 business premises

27 (A) owned by or leased by the defendant; or

28 (B) in the course of the defendant's employment for the owner  
29 or lessee of those premises.

30 \* Sec. 3. AS 18.65.700(a) is amended to read:

31 (a) The department shall issue a permit to carry a concealed handgun to a

- 1 person who
- 2 (1) applies in person at an office of the Alaska State Troopers;
- 3 (2) qualifies under AS 18.65.705;
- 4 (3) submits a completed application on a form provided by the
- 5 department, that provides the information required under AS 18.65.705 and 18.65.710
- 6 [AND IS EXECUTED UNDER OATH]; with each application form provided by the
- 7 department, the department shall provide a copy of the state laws and regulations
- 8 relating to concealed handguns, which must include a concise summary of where,
- 9 when, and by whom a handgun can be carried under state and federal law;
- 10 (4) submits two complete sets of fingerprints on Federal Bureau of
- 11 Investigation approved fingerprint cards that are of sufficient quality so that the
- 12 fingerprints may be processed: the fingerprints must be taken by a person, group, or
- 13 agency approved by the department; the department shall maintain a list of persons,
- 14 groups, or agencies approved to take fingerprints and shall provide the list to the
- 15 public upon request;
- 16 (5) submits evidence of successful completion of a handgun course
- 17 [COMPETENCE WITH HANDGUNS] as provided in AS 18.65.715;
- 18 (6) provides one [TWO] frontal view color photograph
- 19 [PHOTOGRAPHS] of the person taken within the preceding 30 days that includes
- 20 [INCLUDE] the head and shoulders of the person and is [ARE] of a size specified by
- 21 the department;
- 22 (7) shows a valid Alaska driver's license or identification card at the
- 23 time of application;
- 24 (8) does not suffer a physical infirmity that prevents the safe handling
- 25 of a handgun; and
- 26 (9) pays the application fee required by AS 18.65.720.

27 \* Sec. 4. AS 18.65.700(d) is amended to read:

- 28 (d) A permit issued under (a) of this section is valid for five years from the
- 29 date of issue. [THE PERMIT MUST SPECIFY THE ACTION TYPES AND
- 30 MAXIMUM CALIBERS OF HANDGUN DESCRIBED IN THE PERMITTEE'S
- 31 CERTIFICATE OF COMPETENCY UNDER AS 18.65.715 BUT MAY NOT

1 SPECIFICALLY IDENTIFY A HANDGUN BY MAKE, MODEL, OR SERIAL  
2 NUMBER.]

3 \* Sec. 5. AS 18.65.705 is amended to read:

4 Sec. 18.65.705. Qualifications to obtain a permit. A person is qualified to  
5 receive and hold a permit to carry a concealed handgun if the person

6 (1) is 21 years of age or older;

7 (2) is eligible to own or possess a handgun under the laws of this state  
8 and under federal law;

9 (3) is a resident of the state and has been for the 90 days immediately  
10 preceding the application for a permit;

11 (4) has not been convicted of two or more class A misdemeanors of  
12 this state or similar laws of another jurisdiction within the six years immediately  
13 preceding the application;

14 (5) is not now in and has not in the three years immediately preceding  
15 the application been ordered by a court to complete an alcohol or substance abuse  
16 treatment program; and

17 (6) has successfully completed a handgun course [DEMONSTRATED  
18 COMPETENCE WITH HANDGUNS] as provided in AS 18.65.715.

19 \* Sec. 6. AS 18.65.710(a) is amended to read:

20 (a) The application for a permit to carry a concealed handgun must contain the  
21 following information:

22 (1) the applicant's name, physical residence, mailing address, place and  
23 date of birth, physical description, including height, weight, race, hair color, and eye  
24 color, Alaska driver's license or identification card number, and the city and state of  
25 each place the applicant has resided in the five years immediately preceding the  
26 application;

27 (2) a statement that the applicant qualifies under AS 18.65.705;

28 (3) a statement that the applicant has been furnished with a copy of the  
29 state laws and regulations relating to concealed handguns, has read those sections, and  
30 understands them;

31 (4) a statement that the applicant desires a permit to carry a concealed

1 handgun for a lawful purpose, which may include self-defense;

2 (5) a [SWORN] statement by the applicant that all statements, answers,  
3 and attachments to the application are true and complete;

4 (6) a conspicuous warning that [THE APPLICATION IS EXECUTED  
5 UNDER OATH AND THAT] an applicant who supplies a false statement, answer, or  
6 document, in connection with the application that the applicant does not believe to be  
7 true, may be prosecuted for unsworn falsification [PERJURY UNDER AS 11.56.200]  
8 and, if found guilty, may be punished for violation of a class A misdemeanor [B  
9 FELONY], and that, in such cases, the permit shall be revoked and the applicant may  
10 be barred from any further application for a permit; and

11 (7) a statement that the applicant understands that a permit eligibility  
12 investigation will be conducted as a part of the application process, that this may  
13 involve computerized records searches, and that the applicant authorizes the  
14 investigation.

15 \* Sec. 7. AS 18.65.715(a) is amended to read:

16 (a) An applicant for a permit to carry a concealed handgun shall provide a  
17 certificate of successful completion of a handgun course that is approved by the  
18 department. [THE CERTIFICATE MUST STATE THE ACTION TYPE AND  
19 CALIBER OF HANDGUN OR HANDGUNS THE APPLICANT HAS  
20 DEMONSTRATED COMPETENCE WITH AND THAT THE APPLICANT MAY BE  
21 PERMITTED TO CARRY. A PERMITTEE MAY ONLY CARRY AS A  
22 CONCEALED HANDGUN AN ACTION TYPE OF HANDGUN DESCRIBED IN  
23 THE CERTIFICATE. A PERMITTEE MAY ONLY CARRY AS A CONCEALED  
24 HANDGUN THE CALIBER OF THE ACTION TYPE THAT THE PERMITTEE  
25 DEMONSTRATED COMPETENCE WITH OR ANY LESSER CALIBER OF THE  
26 SAME ACTION TYPE.] The handgun course must have been completed within the  
27 12 months immediately preceding the application. The department shall approve a  
28 handgun course, including the personal protection course offered by the National Rifle  
29 Association, if the course tests the applicant's

30 (1) knowledge of Alaska law relating to firearms and the use of deadly  
31 force;

1 (2) familiarity with the basic concepts of the safe and responsible use  
2 of handguns;

3 (3) knowledge of self-defense principles; and

4 (4) physical competence with a [EACH ACTION TYPE OF] handgun  
5 [THE APPLICANT WISHES TO CARRY UNDER THE PERMIT AND THE  
6 MAXIMUM CALIBER FOR EACH ACTION TYPE THE APPLICANT WISHES TO  
7 CARRY UNDER THE PERMIT].

8 \* Sec. 8. AS 18.65.725(a) is amended to read:

9 (a) A permittee shall apply [IN PERSON] for renewal of a permit to carry a  
10 concealed handgun within 90 days before the expiration of the permit and shall present  
11 a complete renewal form provided by the department. The renewal form [SHALL BE  
12 S UBMITTED UNDER OATH AND] must include

13 (1) any change in the information originally submitted under  
14 AS 18.65.710;

15 (2) a statement that the person remains qualified to receive and hold  
16 a permit to carry a concealed handgun under AS 18.65.705;

17 (3) one [REPEALED

18 (4) TWO] frontal view photograph [PHOTOGRAPHS] of the person  
19 taken within the preceding 30 days that includes [INCLUDE] the head and shoulders  
20 of the person and is [ARE] of a size specified by the department;

21 (4) [AND (5)] the renewal fee required under AS 18.65.720; and

22 (5) the warning listed in AS 18.65.710(a)(6).

23 \* Sec. 9. AS 18.65.725(c) is amended to read:

24 (c) A renewal of a permit to carry a concealed handgun submitted on or after  
25 the expiration date is subject to a late fee of \$25. The department may not accept a  
26 renewal for a permit that is submitted more than 60 [30] days after the expiration date  
27 of the permit. Nothing in this subsection prohibits the holder of an expired permit  
28 from applying for a new permit.

29 \* Sec. 10. AS 18.65.730 is amended to read:

30 **Sec. 18.65.730. Replacement of permit.** The department may replace a  
31 permit that the permittee certifies under oath has been lost, stolen, or destroyed,

1 provided the permittee applies in person and

2 (1) provides one [TWO] frontal view photograph [PHOTOGRAPHS]  
3 of the permittee taken within the preceding 30 days that includes [INCLUDE] the head  
4 and shoulders and is [ARE] of a size specified by the department;

5 (2) [SUBMITS TO THE TAKING OF A SINGLE THUMB OR  
6 FINGERPRINT BY THE DEPARTMENT TO COMPARE AGAINST THE  
7 FINGERPRINT ORIGINALLY SUBMITTED WITH THE APPLICATION; AND

8 (3)] pays the replacement fee required under AS 18.65.720.

9 \* Sec. 11. AS 18.65.740(a) is amended to read:

10 (a) A permit to carry a concealed handgun shall be immediately revoked by  
11 the department when the permittee

12 (1) becomes disqualified to receive and hold a permit under  
13 AS 18.65.705;

14 (2) is convicted of two class A misdemeanors of this state or similar  
15 laws of another jurisdiction within a six-year period if at least one of the convictions  
16 occurs after the application;

17 (3) knowingly supplied a false or fraudulent answer, statement, or  
18 document, or made a material misstatement or omission, in connection with an  
19 application for a permit or renewal or replacement of a permit.

20 \* Sec. 12. AS 18.65.748 is amended to read:

21 **Sec. 18.65.748. Permit holders from other jurisdictions considered Alaska**  
22 **permit holders.** A person holding a valid permit to carry a concealed handgun from  
23 another state or a political subdivision of another state

24 (1) with permit requirements similar to [AT LEAST AS STRICT AS]  
25 those in AS 18.65.700 - 18.65.790 is a permittee under AS 18.65.700(b) for purposes  
26 of AS 18.65.750 - 18.65.765 if the person has not been in Alaska for more than 120  
27 consecutive days: in this paragraph, "permit requirements similar to those in  
28 AS 18.65.700 - 18.65.790" means that, in order to receive and hold the permit in  
29 the other state or political subdivision, the person must

30 (A) he at least 21 years of age;

31 (B) be eligible to own or possess a handgun under state or

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

federal law;

(C) successfully complete some type of handgun or firearms

safety course; and

(D) be subject to a fingerprint-based criminal records

search;

(2) is a permittee under AS 18.65.700(b) for purposes of AS 18.65.750 - 18.65.765 if the person has not been in Alaska for more than 120 consecutive days and the other state or political subdivision allows a permittee under AS 18.65.700 - 18.65.790 to carry a concealed handgun in the other state or political subdivision; the department shall determine which states or political subdivisions grant reciprocity to permittees under AS 18.65.700 - 18.65.790 and shall distribute a list of those jurisdictions to each law enforcement agency in this state.

\* Sec. 13. AS 18.65.760(a) is amended to read:

(a) The holder of a permit issued under AS 18.65.700 - 18.65.790 may not

- (1) alter the permit;
- (2) allow another person to use the permit;
- (3) possess or display a suspended or revoked permit; or
- (4) display an expired permit, unless the holder has submitted a

complete, timely renewal form under AS 18.65.725 and the renewal process has been delayed due to circumstances not under the control of the applicant.

\* Sec. 14. AS 18.65.778 is amended to read:

**Sec. 18.65.778. Municipal preemption.** A municipality may not restrict the carrying of a concealed handgun by permit under AS 18.65.700 - 18.65.790 [EXCEPT AS PROVIDED IN AS 18.65.780 - 18.65.785].

\* Sec. 15. AS 18.65.725(b), 18.65.765(a)(4), 18.65.780, 18.65.785, 18.65.790(5), and 18.65.790(6) are repealed.

# FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

No. 1  
Bill Version: CSSB 294 (JUD)  
(S) Publish Date: 4-4-00

Revision Date \_\_\_\_\_ Dept. Affected Public Safety  
Title Relating to the possession of concealed handguns BRU AK. State Trooper - Detachments  
and to concealed handgun permits. Component AK. State Trooper - Detachments  
Sponsor Senate Judiciary Committee  
Requester Senate Judiciary Committee Component No. 2325

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<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 (FY2000) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill is not expected to have a budgetary impact.

Prepared by: Royce Weller, Special Assistant Phone 465-2649  
Division Office of the Commissioner Date/Time 3/29/00 12:00 AM  
Approved by Commissioner Ronald L. Otte Date 3/29/00  
Agency Department of Public Safety

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information, call the Governor's Legislative Office

# ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair  
Sen. Rick Halford, Vice-Chair  
Sen. Dave Donley  
Sen. John Torgerson  
Sen. Johnny Ellis



State Capitol  
Juneau, AK 99801-1182  
(907) 465-3717 fax: 465-3922  
Interim  
716 W. 4<sup>th</sup> Ave. Suite 540  
Anchorage, AK 99501  
(907) 269-0220 fax:269-0163

## Senate Judiciary Committee

April 17, 2000

Representative Pete Kott  
Chair, House Judiciary Committee  
State Capitol, Room 118  
Juneau, Alaska 99801-1182

Dear Representative Kott:

Please accept this letter as a request for the House Judiciary Committee to schedule CS for Senate Bill 294. "An Act relating to the possession of concealed handguns and to concealed handgun permits." This bill will eliminate some of the cumbersome and unnecessary language in existing law and revise our statutes in one of the most successful concealed carry programs in the United States.

Attached you will find a copy of the bill, sponsor statement and other supporting information. Thank you for your time and consideration in scheduling SB 294. If you have any questions please feel free to contact Jim Pound or me.

Sincerely:

A handwritten signature in cursive script, appearing to read "Robin L. Taylor".

Robin L. Taylor  
Chair, Senate Judiciary Committee

Attachments

RLT/jp

# ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair  
Sen. Rick Halford, Vice-Chair  
Sen. Dave Donley  
Sen. John Torgerson  
Sen. Johnny Ellis



State Capitol  
Juneau, AK 99801-1182  
(907) 465-3717 fax: 465-3922  
Interim  
716 W. 4<sup>th</sup> Ave. Suite 540  
Anchorage, AK 99501  
(907) 269-0220 fax: 269-0163

## Senate Judiciary Committee

### Sponsor Statement CS FOR SENATE BILL 294

#### **"An Act relating to the possession of concealed handguns and to concealed handgun permits"**

Since its passage, Alaska's concealed carry law has been one of the most successful programs in the United States. That success is based, in part, on the original intent of the legislation to allow only knowledgeable, law-abiding citizens to obtain state permits to carry concealed handguns. Although the program has been successful, there are several recurring problems with the implementation and management of the state's program. SB 294 proposes statutory changes to improve and streamline the process to obtain and renew a concealed handgun permit.

CS for SB 294 will eliminate some of the cumbersome and unnecessary language written into the statute: applicants will no longer be required to have a sworn application; permit holders will be allowed to submit their renewal applications up to 60 days after expiration, rather than 30 days. This allows more time to complete the renewal process before the expiration date; a new photograph will be required every ten years, instead of every five (same as for a state driver's license); additional thumb prints will no longer be required during the renewal process, as prints never change.

The bill also makes changes to some of the training and education statutes, streamlining the process and making reciprocity with other states more attainable. The applicant will be required to provide evidence of completion of a handgun or firearms safety course, but eliminates the more subjective requirement by eliminating the specific statutory definition of "competence," which is causing problems with reciprocity and/or recognition with other states. Alaska State Troopers now will be authorized by statute to help teach handgun courses, which may generate additional revenue.

In addition, SB 294 makes the statute apply equally to all citizens statewide and clarifies the standards for recognition of permits from other states.

SB 294 streamlines and improves a program that has been, and will continue to be, a success for Alaska.



NATIONAL RIFLE ASSOCIATION OF AMERICA  
INSTITUTE FOR LEGISLATIVE ACTION  
555 CAPITOL MALL, SUITE 455  
SACRAMENTO, CALIFORNIA 95814  
(916)446-2455 voice ■ (916)448-7469 fax

### Fax Transmittal Cover Sheet

Message To Be Delivered To: House State Affairs Committee Members  
cc: Senator Robin Taylor

Message From: Brian Judy, Alaska State Liaison

Date and Time Message Sent: April 14, 2000 4:30 p.m.

Regarding: CSSB 294 - SUPPORT

Number of Pages Including Cover Sheet: 2

---

On behalf of the more than 20,000 members of the National Rifle Association who live in Alaska, I strongly urge your support for Senate Bill 294.

The changes proposed to the concealed weapon permit law by this legislation fall into three categories: 1) technical changes; 2) process efficiency modifications and 3) substantive changes.

The technical change made by SB 294 is deletion of the requirement that permit applications be "sworn" and changes the crime from "perjury" to "unsworn falsification" with a corresponding penalty modification. It is my understanding that this amendment was recommended by legislative counsel and NRA is fine with this change.

SB 294 would also allow trooper participation in familiarity courses, allow use of the previous photo for permit renewal and replacement, extend the period for renewal after permit expiration from 30 to 60 days, delete the requirement that thumbprints be given when permits are renewed or replaced and extend the validity of expired permits when the renewal process is delayed. These "process efficiency" amendments are all proposed with the intent of making the permit issuance process run more smoothly and NRA is in full support of all these changes.

The National Rifle Association also strongly supports the three substantive changes proposed by SB 294:

1) *Clarification of the requirements for recognition of other states' permits.*

This change will allow more law-abiding citizens to be able to provide a means of self-defense while visiting Alaska. Such recognition by Alaska will, in turn, cause more states to recognize the permits of Alaskans when they are in those states.

2) *Deletion of the virtually unused and unconstitutional municipal opt-out provisions.*

Since 1994, when the concealed weapon law was enacted, only one municipality has attempted to restrict law-abiding citizens' ability to carry a means of self-defense concealed. In 1998, firearm prohibitionists in the City of Haines put a measure on the ballot and were rejected by a 3-1 margin. If a restrictive ordinance was adopted at some point in the future, it would be violative of Article I, Section 19 of the Alaska State Constitution which provides that "The individual right to keep and bear arms shall not be denied or infringed by...a political subdivision of the state."

3) *Deletion of the "competency" requirement and action/caliber specifications.*

While the NRA is the foremost advocate of safe and responsible firearm use, these statutory mandates are unnecessary. If you look at the range of states which allow concealed carry, from Vermont, which doesn't even require a permit to carry a concealed firearm for self-defense, to Washington, which issues permits (over 200,000 issued currently) with no training requirement of any kind, to Utah, which requires familiarity with no live-fire requirement, to Alaska, which does require live-fire, the empirical outcome is the same: law-abiding citizens are safe and responsible and do not cause problems, training-related or otherwise. In Alaska, law-abiding citizens can carry firearms *openly* without a permit, without being fingerprinted, without paying fees and without costly, government-mandated training programs. Although there is no practical reason why individuals who submit to licensing and background checks in order to carry *concealed* should be treated differently than those who choose to carry *openly*, this bill maintains the requirement that permit applicants take a familiarity course; it only deletes the unnecessary and arbitrary competency standards.

The National Rifle Association urges your support for Senate Bill 294.



**2000**

**One Minute Speeches**

**RATIO OF ACCIDENTAL MEDICAL DEATHS TO ACCIDENTAL GUN DEATHS**

April 04, 2000

Mr. Speaker, something does not add up, the number of accidental deaths involving guns average 1,500 per year; and the number of accidental deaths caused by doctors, surgeons, and hospitals average 120,000 a year, 120,000 per year. That means the ratio of accidental medical-related deaths to accidental gun deaths is 80 to 1, 80 times more possible of being killed accidentally by a doctor than a gun.

Tell me, Mr. Speaker, should we mandate a 5-day waiting period on vasectomies?

Beam me up. Congress does not need more gun laws; America must enforce the laws that we have.

I yield back all the American lives saved by an honest law-abiding American who just happened to have a gun.

[<< Return to 2000 Archives](#)



[Return to Home Page](#)