

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10595 SENATE • JUDICIARY

440



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
committee name

Committee on SB 231, dated April 10, 2002
bill # / subject

See 1 page attached

Signed: William R. Parker
Testifier

Self
Representing (optional)

35367 Rabbit Run Rd Soldotna, AK 99669
Address

262-7677
Phone number

I support SB 231.

State correctional facilities are accepted in their local communities so there is more support to expand existing facilities.

Having inmates remain in one location from the time of their arrest until they are released at the end of their sentence saves a bunch of transportation costs.

Inmates are much less likely to reoffend if they are close to family and community. The support they can receive will help them return to society as productive members.

Every inmate who successfully re-enters society and does not re-offend saves the community and the tax payers more than just the costs of courts and incarceration. He or she also saves the community the pain and loss that would have resulted from new criminal activity.

Smaller regional correctional centers are less likely to have gang problems and more able to help individual inmates rehabilitate.

Public correctional centers are interested in rehabilitating inmates and getting them back into society so that they can once again be productive members of that society.

Private prisons are only interested in making a profit for their stockholders. The way they do that is to keep their beds full. There is no incentive to try to help the inmates rehabilitate. More criminals and more crime equal more profit.

The federal government has said that there is no real savings with private prisons. The state still retains all of the liabilities. It does not retain the inmates or control of the costs of incarceration.

Let us expand our existing state facilities.

W. Parker

S B

2 3 5

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 235
 (S) Publish Date: 1/16/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Military Affaris
 Title Emergency Management Assistance BRU Disaster Planning and Control
Compact Component Disaster Planning and Control
 Sponsor Rules
 Requester Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill authorizes the department to enter into an agreement with other states for mutual assistance during disasters or emergencies. There is no fiscal impact to the state of joining this pact.

Prepared by: Carol Carroll Phone 465-4730
 Division: Administrative Services Date/Time 12/11/01 2:55 PM
 Approved by: Carol Carroll Date 12/11/2001
 Agency: Military and Veterans Affairs

Bill History/Action Display



BILL: SB 235

SHORT TITLE: EMERGENCY MANAGEMENT ASSISTANCE COMPACT

BILL VERSION:

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

CURRENT STATUS: (S) JUD

STATUS DATE: 02/22/02

TITLE: "An Act relating to emergency and disaster relief forces as state employees for purposes of workers' compensation benefits; relating to the Emergency Management Assistance Compact and the implementation of the compact; and providing for an effective date."

[Full Text](#)

[Fiscal Notes](#)

Committee Action with Bill History

Jrn-Date	Jrn-Page	Action
01/16/02	<u>1952</u>	(S) READ THE FIRST TIME - REFERRALS
01/16/02	<u>1952</u>	(S) STA, L&C, JUD
01/16/02	<u>1952</u>	(S) FN1: ZERO(MVA)
01/16/02	<u>1953</u>	(S) GOVERNOR'S TRANSMITTAL LETTER
02/01/02	<u>2081</u>	(S) STA RPT CS 4DP SAME TITLE
02/01/02	<u>2081</u>	(S) DP: THIERRIAULT, PHILLIPS, DAVIS,
02/01/02	<u>2081</u>	(S) STEVENS
02/01/02	<u>2081</u>	(S) FN1: ZERO(MVA)
02/22/02	<u>2281</u>	(S) L&C RPT CS(STA) 3DP
02/22/02	<u>2281</u>	(S) DP: STEVENS, LEMAN, DAVIS
02/22/02	<u>2281</u>	(S) FN1: ZERO(MVA)
02/22/02	<u>2281</u>	(S) REFERRED TO JUDICIARY

Similar Subject Match or Exact Subject Match

COMPACTS

DISASTER

PUBLIC SAFETY

WORKERS COMPENSATION

Bill Root: Display Bill Root



TO REPORT PROBLEMS WITH BASIS INQUIRY

LIVE KTOO STREAMS

Return to Basis Main Menu (22 Legislature)

Return to Legislature Home Page

STATE OF ALASKA
DEPARTMENT OF MILITARY & VETERANS AFFAIRS
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 5800

FT. RICHARDSON, AK 99505-5800

PH: (907) 428-6003

February 28, 2002

The Honorable Robin Taylor, Chair
Senate Judiciary Committee
Alaska State Capitol
Juneau, AK 99801

Dear Senator Taylor:

The Department of Military and Veterans Affairs respectfully requests a hearing on CSSB 235(STA) "An Act relating to emergency and disaster relief forces as state employees for purposes of workers' compensation benefits; relating to the Emergency Management Assistance Compact and the implementation of the compact; and providing for an effective date."

The bill accomplishes two purposes: 1) clarifies who is covered by the state's workers' compensation program when responding to a disaster and 2) enacts the Emergency Management Assistance Compact.

I look forward to working with you on this bill. If you need additional information please contact Carol Carroll at 465-4730 or Wayne Rush at 428-7032.

Sincerely,



MG Phillip Oates
Commissioner

**REQUEST FOR
HEARING**

SB235 Emergency Management Assistance Compact (EMAC)

What does this bill accomplish?

1. It repeals the outdated Interstate Civil Defense and Disaster Compact (AS 26.23.120 and 130) and replaces it with the Emergency Management Assistance Compact (EMAC), a mutual aid agreement that facilitates disaster assistance among member states.
2. It updates AS 23.30.244 to provide worker's compensation for specific categories of disaster volunteers, namely those who perform duties in another state under EMAC or those who perform duties in Alaska under the Division of Emergency Services.

What is EMAC?

EMAC allows states to assist one another during emergencies. It offers a quick and easy way for states to send personnel and equipment to help disaster relief efforts in other states. There are times when state and local resources are overwhelmed and federal assistance is inadequate or unavailable. Out-of-state aid through EMAC helps fill such shortfalls.

EMAC establishes a firm legal foundation. Requests for EMAC assistance are legally binding, contractual arrangements which make states that ask for help responsible for reimbursing all out-of-state costs and liable for out-of-state personnel. States that send aid will not incur a financial burden.

EMAC provides fast and flexible assistance. EMAC allows states to ask for whatever assistance they need for any emergency, from earthquakes to acts of terrorism. At the same time, EMAC makes no requirement for a state to send assistance unless they determine to provide the requested assistance.

Why should Alaska join EMAC?

While Alaska is capable of handling most disasters/emergencies, as demonstrated by past events, there are times when disasters exceed State and local resources and therefore require outside assistance. Normally this assistance comes from federal agencies through the Federal Emergency Management Agency (FEMA). However, not all disasters qualify for a Presidential Disaster Declaration and therefore are not eligible for federal assistance.

EMAC provides a means for Alaska to receive interstate assistance when federal assistance is not merited or available. Even when federal assistance is merited, EMAC assistance may be more readily available or more cost effective, or it may be necessary to supplement federal assistance. In any case, EMAC allows other member states to assist Alaska by rapidly providing their unique resources and expertise in the event of a large-scale disaster. EMAC costs incurred for a disaster that receives a Presidential Disaster Declaration are reimbursable by FEMA at the same cost share (75/25) as other costs incurred by the state.

Because a terrorist attack has the potential to be catastrophic and therefore overwhelming, Alaska should take all possible measures to obtain outside assistance prior to such an event.

Membership in EMAC will also allow Alaska to rapidly provide requested assistance to other states in a process that provides mutually agreed upon and understood requirements for reimbursement and responsibility for the welfare of personnel and resources.

SECTIONAL ANALYSIS OF SB 235

(Re emergency and disaster relief forces as state employees
for workers' comp and re the Emergency Management Assistance Compact)

Section 1 repeals and reenacts existing AS 23.30.244 (workers' compensation; civil defense and disaster relief forces as state employees). Presently, this statute provides that an Alaskan temporarily engaged in civil defense or disaster relief, whether in another state under an interstate compact or as a volunteer in this state, is considered an employee of the state for purposes of workers' compensation. The statutory change will make administration of workers' compensation coverage for disaster workers the same as for emergency medical technicians—in order to be covered as state employees for workers' compensation purposes, these workers must be listed on a roster maintained by the Division of Emergency Services. This will result in faster payment of claims, and will assist in risk management in tracking the number of potential claimants.

Sections 2 and 4 makes conforming amendments to AS 26.23.070 (establishment of interjurisdictional disaster planning and service areas) and AS 26.23.210 (relationship of disaster laws to civil defense laws) to make these statutes consistent with the adoption of the Emergency Management Assistance Compact and the repeal of the Interstate Civil Defense and Disaster Compact, discussed below in sections 3 and 5.

Section 3 enacts the Emergency Management Assistance Compact (EMAC). The compact is a uniform agreement that establishes a framework by which states can request assistance from and provide assistance to other states in declared disasters and emergencies. The EMAC was originally developed and adopted by states in the southeastern United States and now has been adopted by 43 states, including New York, New Jersey, and Michigan, which joined after the September 11 attack.

Article I of the EMAC describes its purpose, and provides for mutual cooperation in emergency-related exercises and training as well as in disaster response.

Article II describes the general implementation of the EMAC, with each state designating an emergency management official responsible for formulating appropriate mutual aid plans and procedures consistent with the EMAC.

Article III describes party states' responsibilities for planning and preparedness, and describes the procedures by which a state may request assistance of another state. Such assistance may be in the form of personnel, equipment, materials, supplies, or emergency services such as fire services, medical services, transportation.

Article IV provides that the state receiving a request for assistance shall take such action as is necessary to provide the requested resources, however it may withhold them to the extent necessary to provide reasonable protection in its own state. This article also

specifies that the requesting state must declare a state of emergency or disaster, and the emergency forces are under the immediate command and control of their regular leaders, but are under the operational control of the requesting state.

Article V provides that in general, a license, certificate, or other permit held by a responder in the assisting state is valid when providing assistance in the requesting state.

Article VI provides that employees of the assisting state are considered agents of the requesting state for tort liability and immunity purposes, and no assisting state's employees shall be liable for any good faith act or on account of the maintenance or use of equipment or supplies.

Article VII authorizes supplementary agreements in addition to the EMAC.

Article VIII specifies that the requesting state shall pay workers' compensation and death benefits to members of its emergency forces and the representatives of deceased members who are injured and killed while rendering aid to another state, in the same manner and on the same terms as if they were injured or killed within their own state.

Article IX provides for reimbursement by the requesting state of the costs incurred by the assisting state in responding to the request.

Article X addresses planning for and implementation of evacuations from one state to another.

Articles XI, XII, and XIII cover administration of the EMAC, including provisions for withdrawal, principles of interpretation, and additional provisions respecting the use of the National Guard.

Section 5 repeals the outdated Interstate Civil Defense and Disaster Compact.

SB

242

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 242
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title Concoaled Handgun Permittes BRU AST-Detachments
 Component AST-Detachments
 Sponsor Senator Taylor
 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 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact for the Department of Public Safety.

Prepared by: Lt. Julia Grimes Phone 269-4532
 Division: Division of Alaska State Troopers Date/Time 1/31/02 8:48 AM
 Approved by: Commissioner Glenn Godfrey Date 1/31/2002
 Agency: Department of Public Safety

Alaska State Legislature

Chairman,
Judiciary Committee

Vice-Chairman,
Administrative Regulations
Revenue Committee

Member,
Transportation Committee
Resources Committee



Senator Robin L. Taylor

State Capitol
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50 Front Street
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Ketchikan, Alaska 99901
(907) 225-8088
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SPONSOR STATEMENT

SB 242

“An Act relating to concealed handgun permittees.”

A statutory revision is needed to further clarify the recognition of concealed handgun permits from other states. The 21st Legislature passed Senator Taylor’s SB 294, which provided for the recognition of permits from states with permit requirements similar to Alaska, **and** from states which recognize Alaska’s permits. SB 294 also directed the Department of Public Safety to determine which states and political subdivisions grant reciprocity to Alaska permit holders and distribute the list to each law enforcement agency in this state. The department has yet to fully implement this statutory requirement, some sixteen (16) months later.

This legislation will simplify the process by plainly recognizing all permits issued by other states. In so doing, the burden on the department of having to evaluate all the other states’ laws to determine which ones recognize Alaska permits, as well as the subjectivity on the part of the department in determining which other states’ statutes are similar to Alaska law will be removed.

SB 242 will better serve the public and permit holders.

District A:

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

E-mail: Senat

**SPONSOR
STATEMENT**

e.ak.us



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
555 CAPITOL MALL, SUITE 625
SACRAMENTO, CA 95814
Tel (916) 448-2455
Fax (916) 448-7469
www.nra.org

January 8, 2002

Senator Robin Taylor
50 Front Street, Suite 203
Ketchikan, AK 99901

Dear Senator Taylor,

It has now been twenty-two months since you held the informational hearing on Alaska's Concealed Handgun Permit law and sixteen months since the resultant Senate Bill 294 was signed into law by Governor Knowles. I am very disappointed to notify you that the Department of Public Safety foot-dragging which led to that original hearing continues to this day.

As I had done prior to the March 2000 hearing, I have contacted various officials at DPS on numerous occasions since the hearing and have only been successful in achieving partial (and agonizingly slow) progress on their part in implementing the changes made by your SB 294.

If you would be willing and if you think it would be politically viable, it is my recommendation, on behalf of NRA members inside and outside the State of Alaska, that legislation be drafted to remove DPS from the process and simply recognize all other states' concealed firearm permits. The bureaucracy has had way more time than it needed and has been given much more opportunity and notice than should have been required and, still, it has failed to fully implement the law.

Attached is recommended language for your consideration. Thank you for your ongoing interest and support on this issue.

Sincerely,

Brian Judy
Alaska State Liaison

cc: Senate President Rick Halford
Senator Lyda Green
Representative Jeannette James
Wayne Anthony Ross, Attorney-at-Law and NRA Director
Alaska Outdoor Council

Letter of Support

adn.com

Anchorage Daily News

Opinion

(Published: November 17, 2001)

Gun law needs a fix In Alaska, mentally ill can carry concealed weapons

In the fall of 1998, a clerk in an Anchorage store noticed a man who was completely soaked, with water dripping off him. The clerk asked if he needed help. Timothy Wagner replied that he needed to soak out the chemicals that had been injected into him, or else the chemicals were going to kill him. He also said a computer chip had been implanted in his head. What he didn't say was that he was carrying a concealed weapon in his briefcase.

Under Alaska law, the delusional Mr. Wagner had every right to be packing heat. He had a concealed weapons permit, and thanks to a law passed in early 1998, it is perfectly legal for mentally ill people to get and keep concealed weapons permits.

This dangerous aberration in state law was revealed last week in an Alaska Court of Appeals ruling. A judge had tried to revoke Mr. Wagner's concealed carry permit on grounds of mental illness. The 1998 law barred the judge from doing so. It was part of a rewrite of state laws liberalizing access to concealed weapons; the law went into effect after the Legislature overrode Gov. Tony Knowles' veto.

Thankfully, Mr. Wagner didn't hurt anyone during his armed encounter. But it's easy to imagine a different and more deadly outcome. Just eight blocks away from the store in question is Mountain View Elementary School -- the same school where a mentally imbalanced man slashed and nearly killed four students in May.

The judge found another way to keep Mr. Wagner from legally carrying his concealed weapon. She imposed a ban on possessing firearms as a condition of Mr. Wagner's probation on a related offense.

This is a no-brainer: Someone who is not in full possession of his mental faculties should not be in possession of a concealed weapon, with all the attendant risks of injury to himself or others. Imagine the public uproar if some mentally unstable individual should commit mayhem with a weapon permitted under this loophole in the law.

We're all for destigmatizing mental illness and reconsidering restrictions based on old prejudices. But that doesn't mean the state has to give mentally dysfunctional Alaskans the right to carry a gun. While we're all thinking a lot about homeland security, this is a question the Legislature should examine again -- soon.

**Information
Statement**

NOTICE

Memorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited for any proposition of law, nor as an example of the proper resolution of any issue.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

TIMOTHY WAGNER,)
) Court of Appeals No. A-7498
Appellant,) Trial Court No. 3AN-S98-10261 CR
)
v.) MEMORANDUM OPINION
)
STATE OF ALASKA,) AND JUDGMENT
)
Appellee.) [No. 4485 November 7, 2001]
)

Appeal from the District Court, Third Judicial
District, Anchorage, Natalie K. Finn, Judge.

Appearances: Judy M. Scherger, Assistant
Public Defender, and Barbara K. Brink, Public Defender, Anchorage,
for Appellant. Michelle Meshke, Assistant District Attorney, and
Susan Parkes, District Attorney, Anchorage, and Bruce M. Botelho,
Attorney General, Juneau, for Appellee.

Before: Mannheimer and Stewart, Judges, and
Andrews, Superior Court Judge. [Coats, Chief Judge, not
participating.]

STEWART, Judge.

Under AS 18.65.750(b), whenever the holder of a concealed handgun permit is contacted by a peace officer for an official purpose, the permit holder must "immediately inform the peace officer [if the permit holder] is carrying a concealed handgun under the permit." Timothy Wagner was convicted of violating this statute because, during a contact with a police officer, he failed to disclose his possession of a concealed handgun until after the officer specifically asked him if he was armed.

Wagner contends that he did not violate this statute because he was not "carrying" the handgun at the time the officer contacted him. However, Wagner had the gun in a soft-sided briefcase; he was carrying this briefcase, or had it within arm's reach, during his encounter with the officer. Based on our decision in *De Nardo v. State*, [Fn. 1] we conclude that Wagner was "carrying" the weapon when the officer contacted him, and we therefore affirm Wagner's conviction.

Wagner also challenges a provision of his sentence. Wagner argues that the district court exceeded its sentencing authority when it ordered forfeiture of his concealed handgun permit. We agree, and we therefore strike this provision of Wagner's sentence.

Wagner's attack on his conviction

At about 5:30 p.m. on October 7, 1998, Wagner entered Alaska Mining and Diving, a store in Anchorage. Kenneth Hupton, an employee at the store, noticed that Wagner was dripping wet. Hupton asked Wagner why he was so wet, and if he needed any help. Wagner replied that he needed to soak out the chemicals that had been injected into him, or else the chemicals were going to "kill him." Wagner also told Hupton that a computer chip had been implanted in his head. Another employee who overheard this conversation called the police.

Anchorage Police Officer Duane Jones responded to the dispatch; he arrived at Alaska Mining and Diving approximately fifteen minutes later. As Jones approached the store, he saw Wagner

outside. Wagner was carrying a soft-sided briefcase. Jones watched as Wagner set the briefcase into the carrier basket that was on Wagner's bicycle. Unbeknownst to Jones, Wagner's briefcase contained a loaded handgun.

Jones spoke to Wagner, asking him why he was wet. Wagner again stated that he had been injected with toxins and that he was soaking his body and clothing to leech the toxins out. Jones and Wagner conversed for several minutes. During this time, they were standing next to Wagner's bicycle, and Wagner's briefcase was within arm's reach. Wagner furnished identification to Jones, but he did not tell Jones about the handgun.

A short time later, two other police officers arrived at the scene. Jones left Wagner with his fellow officers and went inside Alaska Mining and Diving to interview the store personnel. He also ran a computer check on Wagner. From this check, Jones learned that Wagner had a permit to carry a concealed handgun. Jones went back outside and asked Wagner if he had a gun. Wagner admitted that he did, and he pointed to his briefcase. Jones reached inside the briefcase and found the loaded handgun.

Wagner gave a slightly different version of the encounter. He indicated that he had not engaged in lengthy conversation with Jones. Rather, Jones's first act upon contacting Wagner was to ask for his identification. When Wagner furnished identification, Jones walked away with it.

At the conclusion of this evidence, District Court Judge Natalie Finn (sitting as the trier of fact) found that Wagner had been holding the briefcase containing the loaded weapon when he walked to his bicycle. She further found that the briefcase was in Wagner's hand immediately before Jones contacted Wagner and spoke with him. Although Wagner set the briefcase in the bicycle basket when he conversed with Jones, the briefcase remained within Wagner's easy reach.

In *De Nardo v. State*, we held that Alaska's concealed weapons law prohibits a person from carrying a weapon concealed in a briefcase, purse, or other hand-carried container. [Fn. 2] If Wagner had not owned a concealed handgun permit, he would have been guilty of carrying a concealed weapon under AS 11.61.220(a)(1). As

It was, Wagner's permit authorized him to carry the handgun in his briefcase, but he was obliged to immediately disclose this fact when Officer Jones contacted him.

Wagner argues that Judge Finn erred when she found that Wagner had failed to immediately inform the police that he was carrying a concealed handgun under the authority of his permit. But Judge Finn found that the testimony of the police officers and the store employees was more credible than Wagner's testimony on this point. In particular, the judge found that Wagner and the officers engaged in a lengthy discussion before Wagner mentioned his possession of the handgun. Judge Finn further found that Wagner knew, or reasonably should have known, that the officers were speaking to him for an official purpose. The record supports these findings. Based on these findings, we uphold Judge Finn's verdict that Wagner violated AS 18.65.750(b) by failing to immediately disclose that he was a concealed handgun permit holder and that, under the authority of his permit, he was carrying a concealed weapon.

Wagner's attack on his sentence

As part of Wagner's sentence, Judge Finn ordered forfeiture of Wagner's concealed handgun permit until his mental illness was "either cured or improved." Wagner maintains that Judge Finn did not have the authority to do this. We agree.

Alaska Statute 12.55.015(c) declares that sentencing judges "may invoke any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or impose any other civil penalty." But AS 12.55.015(c) does not grant sentencing judges an independent power to forfeit property and licenses. Rather, it only reiterates the authority granted by other statutes. [Fn. 3]

The State defends Judge Finn's action by relying on a superseded version of 13 AAC 30.130(b). Under that former administrative regulation, the Department of Public Safety could reject an application for a concealed handgun permit or could deny a permit renewal if the department had reason to believe that the applicant suffered from a mental illness. However, this provision

of the Administrative Code was amended in 1998 to eliminate mental illness as a factor that the department can consider when processing concealed handgun permits. [Fn. 4]

If this was removed as factor from the application process when the department set its regulations, this still would not exempt an owner from:

Becoming "disqualified to receive and hold a permit under AS 18.65.705", which reads that; a person is "qualified to receive and hold a permit to carry a concealed handgun if the person

1. Is 21 years of age or older
2. Is eligible to own or possess a handgun under the laws of this state and under **federal law**

Moreover, even if the Administrative Code gave the Department of Public Safety the authority to deny a concealed handgun permit based on the applicant's mental illness, this would not be sufficient to justify the sentencing court's order of forfeiture.

I think this is inaccurate, I think if the dept. became aware of a documented Hx of mental illness without their asking, they would have been made aware of an incidence where a licensee did not qualify for possession under federal law, and would be within their jurisdiction to revoke his permit. Rep. Kerttluu currently has a case where DoT has revoked a man's driver's lisc. Because another person called the dept. to alert them that the man had had epileptic seizures, and they knew this disqualified him from holding a permit to drive. When the dept. ordered a medical eval, a Hx of epileptic seizures was found, and his lisc was revoked. Granted, DoT allows that the state ask him this question, and DoPS does not ask about Hx of mental illness - but both are expressed disqualifications for licensure. I think it is applicable.

As already explained, AS 12.55.015(c) requires explicit "authority conferred by law to order a forfeiture ... revo[cation of] a license."

Which is provided by AS 18.65.740

a. A permit to carry a concealed handgun shall be immediately revoked by the department when the permittee

1. becomes disqualified to receive and hold a permit under **AS 18.65.705**

AS 18.65.705: a person is "qualified to receive and hold a permit to carry a concealed handgun if the person

1. Is 21 years of age or older
2. Is eligible to own or possess a handgun under the laws of this state and under **federal law**

Even assuming that the Department of Public Safety had the authority to deny a permit application because of the applicant's mental illness, the State's argument about Judge Finn's sentencing authority would still rest on analogy, not statute or regulation.

However, in her sentencing remarks, Judge Finn recognized that she might not have the authority to order forfeiture of Wagner's concealed handgun permit.

Correct, because AS 18.65.740 (a) reads that "A permit to carry a concealed handgun shall be immediately revoked by the department when the permittee....."

She may, however, have the authority to order that the department revoke his permit.

Believing that Wagner was mentally ill, and with the goal of protecting the public, Judge Finn placed Wagner on probation for 3 years and ordered that, as a condition of probation, Wagner was not to have any weapons.

I believe this is where Judge Finn acted outside her jurisdiction to achieve a noble end. She has neither the authority nor the training to pronounce a medical diagnosis, and is in fact prohibited from doing so in statute unless she possesses a license to do so. She would have been within her bounds, however, to have ordered a psychological evaluation by a trained psychologist /psychoanalyst, entered that in to the court record, and required the department to revoke Mr. Wagner's permit.

We recently held in *Baum v. State*, [Fn. 5] that a sentencing judge can impose a condition of probation that forbids a defendant from engaging in a licensed activity during the entire term of probation even though the judge could not order a similar revocation of the defendant's license as a direct provision of the sentence. [Fn. 6] We reach a similar conclusion in Wagner's case. Even though Judge Finn had no authority to revoke or forfeit Wagner's concealed handgun permit, she was authorized to impose a condition of probation forbidding Wagner from possessing weapons even though this condition of probation effectively forbids Wagner from exercising the right granted by his concealed handgun permit.

Conclusion

For the reasons explained here, we AFFIRM Wagner's conviction. With regard to Wagner's sentence, we VACATE the provision that orders forfeiture of Wagner's concealed handgun permit, but we AFFIRM the condition of probation that forbids Wagner from possessing weapons during the 3 years of his probation.

**Which appears to produce a right end by a wrong means, unfortunately.
What does this mean for appeals?
If this stands as precedent, it leaves error on the books.**

FOOTNOTES

Footnote 1:

819 P.2d 903 (Alaska App. 1991).

Footnote 2:

Id. at 906-08.

Footnote 3:

See *Benboe v. State*, 738 P.2d 356, 361 (Alaska App. 1987).

Footnote 4:

See Administrative Code Register 148.

Footnote 5:

24 P.3d 577 (Alaska App. 2001).

Footnote 6:

Id. at 581-82.

CHP notes

➤ Permit Application

Section II question 2:

"Are you eligible to own or possess a firearm under the laws of this state and federal law?"

➤ Responsibilities of the Permittee:

AS 18.65.765 (a) 3:

"shall immediately notify the department if the holder is no longer qualified to hold a permit under AS 18.65.705

AS 18.65.705. Qualifications to Obtain a Permit.

A person is qualified to receive and hold a permit to carry a concealed handgun if the person

- (1) is 21 years of age or older;
- (2) is eligible to own or possess a handgun under the laws of this state and under federal law;
- (3) is a resident of the state and has been for the 90 days immediately preceding the application for a permit;
- (4) has not been convicted of two or more class A misdemeanors of this state or similar laws of another jurisdiction within the six years immediately preceding the application;
- (5) is not now in and has not in the three years immediately preceding the application been ordered by a court to complete an alcohol or substance abuse treatment program; and
- (6) has successfully completed a handgun course as provided in AS 18.65.715.

The basic objectives of Title I of the Gun Control Act of 1968 were to ban mail-order sales of firearms and ammunition, confine the purchase of firearms to the buyer's state of residence, and prohibit certain classes of persons from purchasing, receiving or transporting firearms or ammunition in interstate commerce. Specifically, Title I prohibits dealers from selling any firearm or ammunition to any person who is:

- a. convicted of or under indictment for a felony
- b. a fugitive
- c. adjudicated as a mental defective or who has been committed to any mental institution.
- d. addicted to or an unlawful user of marijuana or a stimulant, depressant, or narcotic drug.
- e. less than eighteen years of age for the purchase of a shotgun or rifle
- f. less than twenty-one years of age for the purchase of a firearm that is other than a shotgun or rifle

AS 18.65.765 (b)

Applies a \$100 fine for non-compliance.

➤ **Permit Revocation:**

13 ACC 30.060 (f):

"a permittee who becomes subject to suspension or revocation under a or c of this section shall immediately notify the department and surrender the permit to the nearest peace officer."

- (a) - [refers to AS 18.65.735]
- (c) - [refers to AS 18.765.740]

13 ACC 30.060 (g):

*specifically covers revocation if the dept. becomes aware that the person is unqualified for possession due to a physical infirmity, this does not expressly exclude (f) from applying to a mental infirmity.

13 AAC 30.130. QUALIFICATIONS REGARDING SAFE HANDLING OF A HANDGUN.

(b) The department will notify a permittee that it intends to revoke a permit under 13 AAC 30.060(g) or (h) if, after investigation of a report from a criminal justice agency, physician or other medical provider, or member of the general public relating to the handling of a handgun by, or the physical condition of, a permittee, the department has reason to believe that a permittee

(1) suffers from a physical infirmity that may prevent the safe handling of a handgun, the department will use the procedures set out in 13 AAC 30.060(g) to revoke the permit;

(2) is not able to safely or competently handle a handgun, the department will use the procedures set out in 13 AAC 30.060(h) to revoke the permit.

- 13 AAC 30.060 (h) If, under 13 AAC 30.130(b), the department has reason to believe that a permittee is not able to safely or competently handle a handgun, the department will mail or deliver to the permittee a notice that the department intends to revoke the permittee's permit. After mailing or delivery of the notice, the following procedures apply:

[This appears to be a loop – but could feasibly cover federal disqualifications for mental instability as a reason the department would have reason to believe a person could not competently handle a handgun – it may be vague, but mental competency could apply]

13 AAC 30.140. APPLICATION FORMS.

(a) The department will provide application forms for persons to use in applying for a permit, certificate of approval, or other service under this chapter. An application form submitted under this chapter, and any

document accompanying an application form, must be completed in ink.

(b) Along with an application form, the department will provide to an applicant for a permit

(1) a copy of the definitions of the following terms, as set out in 13 AAC 30.900:

(A) alcohol treatment program;

(B) convicted;

(C) felony;

(D) resident; and

(F) substance abuse treatment program.

(2) a concise summary of where, when, and by whom a handgun can be carried under state and federal law; and

[If the department has failed to list the federal qualifications for firearm possession, including "mental defectiveness", the department is at fault for not meeting its requirements to inform the permit applicant. Such information is required by state law, and in essence we ARE asking the applicant about their mental health (see permit application sec II question 2), albeit not expressly, and we are not recording their answer. This is not "don't ask, don't tell", this is an inquiry that maintains the privacy of the individual.]

> Other

AS 18.65.790. Definitions.

In AS 18.65.700 - 18.65.790,

- (1) "commissioner" means the commissioner of public safety;
- (2) "competence" means the ability to place in a life size silhouette target
 - (A) seven out of 10 shots at seven yards;
 - (B) six out of 10 shots at 15 yards;

[Judge Finn may be using this as rationale to only include physical competence in the department's justifications for revocation. This definition, however, does not exempt the permittee from meeting federal compliance as a condition for state permitting.]

GUN CONTROL ACT OF 1968

SUMMARY

The basic objectives of Title I of the Gun Control Act of 1968 were to ban mail-order sales of firearms and ammunition, confine the purchase of firearms to the buyer's state of residence, and prohibit certain classes of persons from purchasing, receiving or transporting firearms or ammunition in interstate commerce. Specifically, Title I prohibits dealers from selling any firearm or ammunition to any person who is:

- a. convicted of or under indictment for a felony
- b.a fugitive
- c.adjudicated as a mental defective or who has been committed to any mental institution.

In the case that was published in the Saturday edition of the Anchorage Daily News, I believe the Judge overlooked the fact that she could order a psychological evaluation, and the Federal law would have still prevailed in separating this man from his firearm. Once there was any documentation in any medical chart citing that he was "mentally defective" (a term that will, no doubt, sooner or later assume a more politically correct descriptive – in fact the medically accepted term at present is "or has a documented history of mental illness") he would have been excluded from ownership under federal law. I know that even with a temporary restraining order against someone, they must remove their firearms - this seems very similar. The Judge accomplished her goal of public safety, by achieving the same ends – removing the firearm from this man. But I do think the write up treated the 1998 legislation unfairly, since I see other alternatives to the same end.

- d.addicted to or an unlawful user of marihuana or a stimulant, depressant, or narcotic drug.
- e.less than eighteen years of age for the purchase of a shotgun or rifle
- f.less than twenty-one years of age for the purchase of a firearm that is other than a shotgun or rifle

g. a non resident of the State in which the licensee's place of business is located

h. an alien illegally or unlawfully in the United States

i. dishonorably discharged from the armed forces

j. subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner

k. convicted in any court of a misdemeanor crime of domestic violence

Such persons correspondingly are prohibited from purchasing or otherwise acquiring any firearm or ammunition which has been shipped in interstate commerce, and also are prohibited from shipping or transporting any firearm or ammunition in interstate commerce.

The first section prohibits those on the exemption list from purchasing a firearm from a dealer. This section extends that exemption from private purchases as well. This means that persons on the exemption list may legally not own or in any way acquire a firearm.

With certain exceptions-primarily, the purchase of rifles and shotguns-all over-the-counter purchases of firearms by persons other than dealers must be made within the buyer's state of residence. A private individual is prohibited from selling a firearm to any buyer whom he has reason to believe resides in another state. Title I also requires all persons engaged in the business of dealing in firearms to be federally licensed. Dealers must require from all firearms purchasers proof of identity and residence, and buyers must sign under penalty of statement certifying eligibility to purchase.

It shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a firearm unless the federal firearms licensee

contacts the national instant criminal background check system via a chief law enforcement officer and receives notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the firearm by the transferee would violate Federal, State, or local law.

Dealers are required to keep records of all firearms and are forbidden from selling handguns to persons under 21, or rifles and shotguns to persons under 18. Additionally, dealers are prohibited from making any sale of firearms or ammunition which would place the buyer in violation of state or local law.

I believe that if state law also covers exemptions for diminished mental capacity, then if a dealer / seller knowingly sold a firearm to someone exempted from ownership for that reason, that the dealer / seller, as well as the transferee would as well be in violation and could face penalties. --

Finally, Title I forbids the importation of some military surplus firearms, and permits importation only of firearms shown to be "particularly suitable for, or readily adaptable for sporting purposes."

Title II of the Gun Control Act of 1968 is a revision of the National Firearms Act of 1934, and pertains to machine guns, short or "sawed-off" shotguns and rifles, and so-called "destructive devices" (including grenades, mortars, rocket launchers, large projectiles, and other heavy ordnance). Acquisition of these weapons is subject to prior approval of the Secretary of the Treasury, and federal registration is required for possession. Generally, a \$200 tax is imposed upon each transfer or making of any Title II weapon.

A violation of most provisions of Title I, or the making of any false statement with respect to information required to be recorded for the acquisition or sale of firearms or ammunition, is punishable by imprisonment for up to five years and a \$5,000 fine.

I think this would pose yet another fine if the purchaser / transferee had provided false information on any written applications in acquiring his firearm, including Hx of mental illness.

Any person convicted of transporting or receiving firearms or ammunition in interstate commerce with intent to commit a felony therewith may be punished by imprisonment for up to ten years, and fined up to \$10,000.

In addition, any firearms "involved in or used or intended to be used in" any violation of Title I, or of any regulation promulgated thereunder, or of any violation of any federal criminal law, is subject to seizure and forfeiture. Any violation of, or *failure to comply with*, any provision of Title II is punishable by imprisonment for up to ten years and a \$10,000 fine. (Emphasis added.)

Administration and enforcement of the Gun Control Act are the responsibility of the Bureau of Alcohol, Tobacco and Firearms, of the U.S. Treasury Department.

(Wagner Case Sample 1)

Dear ADN,

Did I miss something?

When did federal law relinquish its authority to supercede state and local law?

According to everything I see printed regarding the Katie John case it sure hasn't.

Your article last Saturday, **Gun law needs a fix In Alaska, mentally ill can carry concealed weapons**, may have accurately reported the weak arguments made in our appeals court by a well intended yet misinformed Judge Finn. But your reporter forgot to finish the homework assignment.

Alaska law allows a resident to obtain a concealed handgun permit after meeting a prescribed set of requirements including eligibility under federal law to possess a firearm. (Federal law requires that a person be mentally competent to possess a firearm.) State law also requires that a person immediately remit their Concealed Handgun Permit if they become ineligible to possess it. Judge Finn was correct in assuming that she could not revoke Mr. Wagner's permit herself (because AS 18.65.740 (a) reads that "A permit to carry a concealed handgun shall be immediately revoked by the department"). She may have, however, ordered that he undergo a psychological evaluation to discover if he were in fact eligible under federal law to possess a firearm, and upon entering a finding to the contrary, order the department to revoke Mr. Wagner's permit.

I believe it was negligent for you to report that Alaska has a virtual "don't ask, don't tell" policy relating to firearm possession and mental competency. This has created the illusion that a program designed, and statistically proven, to increase public safety is instituted with blatant disregard for that which it was created. Each person who applies for a Concealed Handgun Permit in Alaska must answer (in section II, question 2) in the affirmative as to whether they "are eligible to possess a firearm under the laws of the state and under federal law" before the state may issue that permit. We DO ask this question, and we do so in a fashion that protects the individual's privacy. A dealer or private party who knowingly sells or remits a firearm to a person unqualified to possess one faces penalties. A permit applicant who falsely reports that they are eligible under federal law to possess a firearm also faces a penalty. The Department of Public Safety is required to immediately revoke a permit from a person if the department becomes aware of that individual's ineligibility for any reason. Any permittee who becomes ineligible is required to immediately notify the department, and remit his permit.

I am more than willing to educate your staff to the intricacies of state and federal law regarding handgun possession concealed or otherwise in order to prevent the further dispersal of misinformation. Let's start working on that correction / retraction.

XXXXXX

(Wagner Case – Sample 2 – mental health)

As a licensed mental health care professional I was alarmed by last Saturday's article **,Gun law needs a fix In Alaska, mentally ill can carry concealed weapons.** Unless Judge Finn possesses a license by the State of Alaska to diagnose mental illness, she has overstepped her bounds, and should be fined herself. Federal law prohibits any person who has been "adjudicated a mental defective" (and believe me, we need to work on that language as well) from possessing a firearm. Any person in this state who is ineligible to possess a firearm under federal law, is also ineligible to receive a Concealed Handgun Permit. I applaud Judge Finn for her interest in public safety, but I believe that she erred in her choice of means to a noble end. Judge Finn would have been within her jurisdiction to have ordered that a licensed mental health professional evaluate Mr. Wagner, and upon a credible diagnosis of mental illness reported his ineligibility of firearm possession to the department of public safety, who could revoke his permit. The complexities of mental illness are intricate, and often misunderstood. Our state has repeatedly failed to recognize nationally accepted strata of mental health care professionals with regards to licensure, and has now allowed untrained persons in places of political power to assume the role of diagnosing mental illness. Our state has satisfactory laws regarding firearm possession. What we need the legislature to evaluate are the processes that AREN'T working.

XXXXX

(Wagner Case – Sample 3 – duh)

Dear Editor, (if there is an editor).

Do you check facts at your paper – or just grammar and spelling?
I'll help you out this time, but you only get one freebie, after that I'm freelance.

Gun law needs a fix In Alaska, mentally ill can carry concealed weapons

Possessed a number of errors – so I'll just go over the big ones for you.

1. Under Alaska law, the delusional Mr. Wagner had every right to be packing heat
 - There is no provision under Alaska State Law for mentally ill persons to possess firearms. Federal law prohibits possession of firearms by "mental defectives". (I can supply website addresses and or references if you desire)
2. thanks to a law passed in early 1998, it is perfectly legal for mentally ill people to get and keep concealed weapons permits.
- See above. An applicant for a CHP must certify under oath that he meets federal requirements for firearm possession.
3. A judge had tried to revoke Mr. Wagner's concealed carry permit on grounds of mental illness. The 1998 law barred the judge from doing so.
 - Federal law delegates the repossession of a firearm to the Bureau of Alcohol Tobacco and Firearms, and or the Department of the Treasury. State Law

delegates that responsibility to the Department of Public Safety. Judge Finn would have been within her jurisdiction to have ordered that the department revoke his permit, or that the permittee remit his weapon to the department rather than to the court. In the event that Mr. Wagner became aware that he did not meet the federal requirements for firearm possession, he is required by both Alaska state law, and his permit to surrender his permit and handgun to the nearest peace officer. In the event that the department becomes aware of a permittee's ineligibility it is required to revoke that permit.

4. This is a no-brainer: Someone who is not in full possession of his mental faculties should not be in possession of a concealed weapon, with all the attendant risks of injury to himself or others.
 - Your reporter is a "no-brainer". Risk of injury to himself or others is the precise reason that federal law exempts a person not in full possession of his mental faculties from the right to possess a firearm.
5. We're all for destigmatizing mental illness and reconsidering restrictions based on old prejudices. But that doesn't mean the state has to give mentally dysfunctional Alaskans the right to carry a gun.
 - The state is in fact prohibited from giving mentally dysfunctional Alaskans the right to carry a gun, concealed or otherwise, under penalty of fine.
6. While we're all thinking a lot about homeland security, this is a question the Legislature should examine again -- soon.
 - We are thinking about homeland security. I submit to you that statistically CHP programs have been shown to create more secure communities, while the widespread propagation of fear inducing misinformation has been shown to have a counter effect.

Please print my letter, and review these discrepancies with your freshman reporter.
XXXXX

Bill Text

BILL ID: HCS CSSB 141(FIN) AM H

00 HOUSE CS FOR CS FOR SENATE BILL NO. 141(FIN) am H

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

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

04 * Section 1. AS 11.61.200(a) is amended by adding a new paragraph to read:

05 (12) knowingly possesses a firearm that is concealed on the person after
06 having been convicted of a felony or adjudicated a delinquent minor for conduct that
07 would constitute a felony if committed by an adult by a court of this state, a court of
08 the United States, or a court of another state or territory.

09 * Sec. 2. AS 11.61.200 is amended by adding new subsections to read:

10 (h) For purposes of (a)(12) of this section, a firearm on a person is concealed
11 if it is covered or enclosed in any manner so that an observer cannot determine that
12 it is a firearm without removing it from that which covers or encloses it or without
13 opening, lifting, or removing that which covers or encloses it. A firearm on a person
14 is not concealed if it is unloaded and is encased in a closed container designed for
01 transporting firearms.

02 (i) It is an affirmative defense to a prosecution under (a)(12) of this section
03 that

04 (1) either

05 (A) the defendant convicted of the prior offense on which the
06 action is based received a pardon for that conviction;

07 (B) the underlying conviction upon which the action is based
08 has been set aside under AS 12.55.085 or as a result of post-conviction
09 proceedings; or

10 (C) a period of 10 years or more has elapsed between the date
11 of the defendant's unconditional discharge on the prior offense or adjudication
12 of juvenile delinquency and the date of the violation of (a)(12) of this section,
13 and the prior conviction or adjudication of juvenile delinquency did not result
14 from a violation of AS 11.41 or of a similar law of the United States or of
15 another state or territory; and

16 (2) at the time of possession, the defendant was

17 (A) in the defendant's dwelling or on land owned or leased by

18 the defendant appurtenant to the dwelling; or

19 (B) actually engaged in lawful hunting, fishing, trapping, or
20 other lawful outdoor activity that necessarily involves the carrying of a weapon
21 for personal protection.

22 * Sec. 3. AS 11.61.210(a) is amended to read:

23 Sec. 11.61.210. Misconduct involving weapons in the fourth degree. (a)

24 A person commits the crime of misconduct involving weapons in the fourth degree if
25 the person

26 (1) possesses on the person, or in the interior of a vehicle in which the
27 person is present, a firearm when the person's physical or mental condition is impaired
28 as a result of the introduction of an intoxicating liquor or a controlled substance into
29 the person's body in circumstances other than described in AS 11.61.200(a)(7);

30 (2) discharges a firearm from, on, or across a highway;

31 (3) discharges a firearm with reckless disregard for a risk of damage
01 to property or a risk of physical injury to a person;

02 (4) manufactures, possesses, transports, sells, or transfers metal
03 knuckles;

04 (5) manufactures, sells, or transfers a switchblade or a gravity knife;

05 (6) knowingly sells a firearm or a defensive weapon to a person under
06 18 years of age;

07 (7) other than a preschool, elementary, junior high, or secondary school
08 student, knowingly possesses a deadly weapon or a defensive weapon, without the
09 permission of the chief administrative officer of the school or district or the designee
10 of the chief administrative officer, within the buildings of, on the grounds of, or on the
11 school parking lot of a public or private preschool, elementary, junior high, or
12 secondary school, on a school bus while being transported to or from school or a
13 school-sponsored event, or while participating in a school-sponsored event, except that
14 a person 21 years of age or older may possess

15 (A) a deadly weapon, other than a loaded firearm, in the trunk
16 of a motor vehicle or encased in a closed container in a motor vehicle;

17 (B) a defensive weapon;

18 (C) an unloaded firearm if the person is traversing school
19 premises in a rural area for the purpose of entering public or private land that
20 is open to hunting and the school board with jurisdiction over the school
21 premises has elected to have this exemption apply to the school premises; in
22 this subparagraph, "rural" means a community with a population of 5,500 or
23 less that is not connected by road or rail to Anchorage or Fairbanks or with a

24 population of 1,500 or less that is connected by road or rail to Anchorage or
25 Fairbanks; or

26 (8) being a preschool, elementary, junior high, or secondary school
27 student, knowingly possesses a deadly weapon or a defensive weapon, within the
28 buildings of, on the grounds of, or on the school parking lot of a public or private
29 preschool, elementary, junior high, or secondary school, on a school bus while being
30 transported to or from school or a school-sponsored event, or while participating
31 in a school-sponsored event, except that a student may possess a deadly weapon, other
01 than a firearm as defined under 18 U.S.C. 921, or a defensive weapon if the student
02 has obtained the prior permission of the chief administrative officer of the school or
03 district or the designee of the chief administrative officer for the possession.

04 * Sec. 4. AS 11.61.220(a) is amended to read:

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

07 (1) knowingly possesses a deadly weapon, other than an ordinary
08 pocket knife or a defensive weapon, that is concealed on the person;

09 (2) knowingly possesses a loaded firearm on the person in any place
10 where intoxicating liquor is sold for consumption on the premises;

11 (3) being an unemancipated minor under 16 years of age, possesses a
12 firearm without the consent of a parent or guardian of the minor;

13 (4) knowingly possesses a firearm

14 (A) within the grounds of or on a parking lot immediately
15 adjacent to a center, other than a private residence, licensed under AS 47.33 or
16 AS 47.35 or recognized by the federal government for the care of children; or

17 (B) within a

18 (i) courtroom or office of the Alaska Court System;

19 or

20 (ii) courthouse that is occupied only by the Alaska
21 Court System and other justice-related agencies;

22 (C) within a domestic violence or sexual assault shelter that
23 receives funding from the state; or

24 (5) possesses or transports a switchblade or a gravity knife.

25 * Sec. 5. AS 11.61.220(b) is amended to read:

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

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

30 (2) actually engaged in lawful hunting, fishing, trapping, or other lawful
31 outdoor activity that necessarily involves the carrying of a weapon for personal
01 protection; [OR]

02 (3) the holder of a valid permit to carry a concealed handgun under
03 AS 18.65.700 - 18.65.790, the [DEADLY] weapon [CONCEALED] was a concealed
04 handgun as defined in AS 18.65.790, and the possession did not occur in a
05 municipality or established village in which the possession of concealed handguns is
06 prohibited under AS 18.65.780 - 18.65.785; or

07 (4) the defendant was considered a permittee under AS 18.65.748
08 and

09 (A) the weapon was a concealed handgun as defined in
10 AS 18.65.790; and

11 (B) the possession did not occur in a municipality or
12 established village in which the possession of concealed handguns is
13 prohibited under AS 18.65.780 - 18.65.785.

14 * Sec. 6. AS 11.61.220(c) is amended to read:

15 (c) The provisions of (a)(2) [(a)(1), (2),] and (4) of this section do not apply
16 to a peace officer acting within the scope and authority of the officer's employment.

17 * Sec. 7. AS 11.61.220(d) is amended to read:

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

19 (1) an affirmative defense that

20 (A) the defendant, at the time of possession, was the holder
21 of a valid permit to carry a concealed handgun under AS 18.65.700 -
22 18.65.790 or was considered a permittee under AS 18.65.748;

23 (B) the loaded firearm was a concealed handgun as defined
24 in AS 18.65.790;

25 (C) the possession occurred at a place designated as a
26 restaurant for the purposes of AS 04.16.049 and the defendant did not
27 consume intoxicating liquor at the place; and

28 (D) the possession did not occur in a municipality or
29 established village in which the possession of concealed handguns is
30 prohibited under AS 18.65.780 - 18.65.785;

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

02 (A) [(1) ON BUSINESS PREMISES] owned by or leased by the
03 defendant; or

04 (B) [(2) ON BUSINESS PREMISES] in the course of the

05 defendant's employment for the owner or lessee of those premises.

06 * Sec. 8. AS 11.61.220 is amended by adding new subsections to read:

07 (h) The provisions of (a)(1) of this section do not apply to a peace officer

08 (1) of this state who is certified by the Alaska Police Standards Council

09 as a peace officer; or

10 (2) employed by another state or a political subdivision of another state

11 who is at the time of the possession certified as a peace officer by the other state and

12 is acting within the scope and authority of the officer's employment.

13 (i) In a prosecution

14 (A) under (a)(4)(B) of this section, it is a defense that the

15 defendant, at the time of possession, was authorized to possess the firearm

16 under a rule of court;

17 (B) under (a)(4)(C) of this section, it is a defense that the

18 defendant, at the time of possession, was authorized in writing by the

19 administrator of the shelter to possess the firearm.

20 * Sec. 9. AS 18.65.700(a) is amended to read:

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

22 person who

23 (1) applies in person at an office of the Alaska State Troopers;

24 (2) qualifies under AS 18.65.705;

25 (3) submits a completed application on a form provided by the

26 department, that provides the information required under AS 18.65.705 and 18.65.710

27 and is executed under oath; with each application form provided by the

28 department, the department shall provide a copy of the state laws and regulations

29 relating to concealed handguns, which must include a concise summary of where,

30 when, and by whom a handgun can be carried under state and federal law;

31 (4) submits two complete sets of fingerprints on Federal Bureau of

01 Investigation approved fingerprint cards that are of sufficient quality so that the

02 fingerprints may be processed; the fingerprints must be taken by a person, group, or

03 agency approved by the department; the department shall maintain a list of persons,

04 groups, or agencies approved to take fingerprints and shall provide the list to the

05 public upon request;

06 (5) submits evidence of competence with handguns as provided in

07 AS 18.65.715;

08 (6) provides two frontal view color photographs of the person taken

09 within the preceding 30 days that include the head and shoulders of the person and are

10 of a size specified by the department;

11 (7) shows a valid Alaska driver's license or identification card at the
12 time of application;

13 (8) does not suffer a physical infirmity that prevents the safe handling
14 of a handgun; and

15 (9) pays the application fee required by AS 18.65.720.

16 * Sec. 10. AS 18.65.700(b) is amended to read:

17 (b) The department shall either approve or reject an application for a permit
18 to carry a concealed handgun under (a) of this section within 30 [15] days of receipt
19 of [PERMIT ELIGIBILITY INFORMATION FROM THE FEDERAL BUREAU OF
20 INVESTIGATION OR OTHER AGENCY NECESSARY TO MAKE A
21 DETERMINATION CONCERNING] the application. If the department has not
22 received necessary fingerprint eligibility information from another agency by the
23 end of this 30-day period, and the applicant is otherwise eligible, the department
24 shall issue a conditional permit to the applicant subject to immediate revocation
25 under the procedure provided in AS 18.65.740(a) - (c) if the fingerprint
26 information subsequently discloses that the applicant is ineligible for a permit
27 [THE DEPARTMENT SHALL REQUEST PERMIT ELIGIBILITY INFORMATION
28 UNDER THIS SUBSECTION WITHIN FIVE DAYS OF THE RECEIPT OF THE
29 APPLICATION]. The department shall notify the applicant in writing of the reason
30 for a rejection.

31 * Sec. 11. AS 18.65.700 is amended by adding a new subsection to read:

01 (e) The department shall issue a permit to carry a concealed handgun to an
02 honorably retired peace officer of this state who applies for a concealed handgun
03 permit within one year of the officer's retirement and who satisfies the requirements
04 of this subsection. To qualify for a permit under this subsection, an honorably retired
05 peace officer must satisfy (a)(1) - (3) and (6) - (9) of this section and, unless the
06 honorably retired peace officer has qualified with a handgun within five years of the
07 officer's retirement, must also satisfy (a)(5) of this section. The department may not
08 require an honorably retired peace officer applying under this subsection to comply
09 with (a)(4) of this section to receive a permit. The department shall issue the permit
10 without submitting information to or receiving permit eligibility information from the
11 Federal Bureau of Investigation. The department may adopt regulations to define an
12 "honorably retired peace officer" and the evidence that must be submitted to establish
13 eligibility under this subsection.

14 * Sec. 12. AS 18.65.705 is repealed and reenacted to read:

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

17 (1) Is 21 years of age or older;

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

20 (3) Is a resident of the state and has been for the 90 days immediately
21 preceding the application for a permit;

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

25 (5) Is not now in and has not in the three years immediately preceding
26 the application been ordered by a court to complete an alcohol or substance abuse
27 treatment program; and

28 (6) has demonstrated competence with handguns as provided in
29 AS 18.65.715.

30 * Sec. 13. AS 18.65.710(a)(3) is amended to read:

31 (3) a statement that the applicant has been furnished with a copy of the
01 state laws and regulations relating to concealed handguns [AS 18.65.700 -
02 18.65.790], has read those sections, and understands them;

03 * Sec. 14. AS 18.65.720 is amended to read:

04 Sec. 18.65.720. Fees. The department shall charge a nonrefundable fee for the
05 processing of the application for and initial issuance of a permit, renewal of a permit,
06 or replacement of a permit. The fees shall be set by regulation and must be based on
07 the actual costs incurred by the department. However, the fee for the processing of an
08 application and initial issuance of a permit may not exceed \$99 [\$125] and the fee for
09 renewal of a permit or replacement of a permit may not exceed \$30 [\$60].

10 * Sec. 15. AS 18.65.735(a) is repealed and reenacted to read:

11 (a) The department shall immediately suspend a permit to carry a concealed
12 handgun if a permittee becomes ineligible to hold a permit under AS 18.65.705.

13 * Sec. 16. AS 18.65.740(a) is amended to read:

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

16 (1) becomes disqualified to receive and hold a permit under
17 AS 18.65.705;

18 (2) Is convicted of two class A misdemeanors of this state or similar
19 laws of another jurisdiction within a six-year [FIVE-YEAR] period if at least one of
20 the convictions occurs after the application;

21 (3) knowingly supplied a false or fraudulent answer, statement, or
22 document, or made a material misstatement or omission, in connection with an

23 application for a permit or renewal or replacement of a permit.

24 * Sec. 17. AS 18.65 is amended by adding a new section to read:

25 Sec. 18.65.748. Permit holders from other jurisdictions considered Alaska
26 permit holders. A person holding a valid permit to carry a concealed handgun from
27 another state or a political subdivision of another state with permit requirements at
28 least as strict as those in AS 18.65.700 - 18.65.790 is a permittee under
29 AS 18.65.700(b) for purposes of AS 18.65.750 - 18.65.765 if the person has not been
30 in Alaska for more than 120 consecutive days.

31 * Sec. 18. AS 18.65.755(a) is repealed and reenacted to read:

01 (a) A permittee may not possess a concealed handgun

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

05 (2) anywhere a person is prohibited from possessing a handgun under
06 state or federal law.

07 * Sec. 19. AS 18.65.790(3) is amended to read:

08 (3) "concealed handgun" means a firearm, that is a pistol or a revolver,
09 and that is covered or enclosed in any manner so that an observer cannot determine
10 that it is a handgun without removing it from that which covers or encloses it or
11 without opening, lifting, or removing that which covers or encloses it; however,
12 "concealed handgun" does not include a shotgun, rifle, [DERRINGER OR OTHER
13 MINIATURE HANDGUN,] or a prohibited weapon as defined under AS 11.61.200
14 [; IN THIS PARAGRAPH,

15 (A) "DERRINGER" MEANS A HANDGUN THAT HAS
16 INDIVIDUAL BARRELS FOR EACH CARTRIDGE IT IS CAPABLE OF
17 FIRING AND LACKS A MANUFACTURER'S INSTALLED TRIGGER
18 GUARD THAT COMPLETELY ENCIRCLES THE TRIGGER AND WHICH
19 IS PART OF THE FRAME; AND

20 (B) "MINIATURE HANDGUN" MEANS A HANDGUN
21 THAT HAS A BARREL LENGTH OF THREE AND ONE-HALF INCHES
22 OR LESS AND LACKS A MANUFACTURER'S INSTALLED TRIGGER
23 GUARD THAT COMPLETELY ENCIRCLES THE TRIGGER AND WHICH
24 IS PART OF THE FRAME];

25 * Sec. 20. AS 18.65.715(b), 18.65.725(a)(3), and 18.65.755(b) are repealed.

Bill



Alaska Outdoor Council

PO Box 73902

Fairbanks, AK 99707-3902

Ph: (907) 455-4262 / FAX: 455-6447

outdoor@polarnet.com

www.alaskaoutdoorcouncil.org

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President
Carl Rosier
Juneau

Sec./Treas.
Eddie Grasser
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**Executive
Director**
Jesse Vander-
Zanden
Fairbanks

January 28, 2002

The Honorable Robin Taylor
Chair, Senate Judiciary Committee
Alaska State Capitol, Room 30
Juneau, AK 99801-1182

Dear Senator Taylor,

On behalf of the Alaska Outdoor Council Board of Directors, I am writing to express our support for Senate Bill 242 and applaud your efforts in resolving this long-standing matter with the Department of Public Safety (DPS).

Please recall that the Alaska Outdoor Council supported enabling legislation regarding conceal carry reciprocity via Senate Bill 294 nearly two years ago. We share the disappointment expressed by the NRA and scores of Alaska conceal carry permit holders who are unnecessarily being restricted simply by inaction on the part of the Administration.

This is a clear example of "administrative override" whereby the inaction of an agency renders the law ineffective in its spirit and letter. Also, it paints an ambiguous picture for those trying to abide by the law – opening them to prosecution – and penalizes those who would otherwise benefit from its passage.

Again, our appreciation for your efforts on this matter and if you have any questions, don't hesitate to contact me.

Sincerely,

Carl Rosier
President

CC: Representative Beverly Masek (with regard to HB 346 companion bill)
Brian Judy, Alaska Liason, NRA-ILA
Eddie Grasser, Field Representative, NRA, Alaska

*Official State Association of the National Rifle Association
"Protecting your hunting, fishing, trapping, and outdoor heritage since 1953."*



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
555 CAPITOL MALL, SUITE 625
SACRAMENTO, CA 95814
Tel (916) 446-2455
Fax (916) 448-7464
www.nra.org

October 9, 2001

Captain David Hudson
Alaska Department of Public Safety
5700 E. Tudor Road
Anchorage, AK 99507

Dear Captain Hudson,

On behalf of the more than 24,000 National Rifle Association members who reside in the State of Alaska, I would like to express appreciation for the opportunity to provide comments on the proposed regulations intended to implement the statutory changes brought about by Senate Bill 294 from the 2000 Legislative Session. As you are aware, NRA members are particularly interested in this issue and, as such, I was intimately involved, on their behalf, in the process leading to the passage of this legislation.

Upon reviewing the proposed regulations, I find them to generally be a very appropriate reflection of the changes intended by SB 294. There are only two subjects on which the NRA wishes to submit substantive comments on behalf of our members: Reciprocity (13 AAC 30.150) and Confidentiality (13 AAC 30.800).

Reciprocity

Prior to the passage of SB 294, Alaska law (AS §18.65.748) provided that concealed weapon permit holders from other states would be recognized in Alaska if the other state had "permit requirements at least as strict" as those in the Alaska statute. In March of 1998, based on this statute, the Department of Public Safety released a Memorandum listing seventeen states from which permits would be recognized. At some point in time between March 1998 and May 1999, DPS changed its position and issued a directive that no other states' permits were recognized. In November 1999, I was personally informed by the DPS Permits and Licensing Unit that individual permit holders could, on an individual case-by-case basis, attempt to secure approval of their permit. It was, in large part, this particular issue that led NRA to push for statutory changes which resulted in the introduction of SB 294.

In order to remove the subjectivity which apparently led to the changing DPS policy, it was a major goal of that bill to specifically clarify what issuance criteria other states' permits must be subject to in order to be recognized by the State of Alaska. As introduced, SB 294 offered a list of four specific criteria to be applied to other states so a clear and simple determination could be made by DPS. In the House State Affairs Committee hearing on April 15, 2000, SB 294 was amended and a second criterion for recognition by Alaska was added. The new language provided that Alaska would, additionally, recognize permits from other states or political subdivisions which honor Alaska permits. The amendatory language also required DPS to determine which states grant reciprocity to Alaska and distribute a list of such states to law enforcement agencies in Alaska.

The National Rifle Association offers the following two comments with respect to 13 AAC 30.150:

1) The proposed regulation states that DPS will post on its website the status of reciprocity with other states. The NRA is not certain that this will meet the requirements of AS §18.65.748 which directs DPS to ensure that each law enforcement agency in the state receives a copy of the listing. Has DPS confirmed that every law enforcement agency in Alaska has Internet access? While the NRA applauds DPS for posting the information on its website so the public-at-large is privy to the same information on which Alaska law enforcement will be basing its enforcement actions, we want to ensure that all Alaska law enforcement personnel have accurate and up-to-date information.

2) SB 294, and the resulting statute, neglected to require DPS to determine which states are recognized by Alaska based on the first criterion and, in turn, notify law enforcement. The NRA respectfully suggests that good government practices and full implementation in the "spirit of the law" would lead DPS to list not only those states granting reciprocity but also those states recognized by Alaska based on their issuance criteria meeting the standards set forth in AS §18.65.748 (1).

Further, up until very recently, the DPS website only listed states with which Alaska had a formal reciprocity agreement. The statute does not require that there be an agreement between Alaska and other states and, thus, there are many other states whose permits are valid in Alaska. I was encouraged to see the recent addition of Michigan (based, I assume, on criterion (1)) to the list of recognized states provided on the DPS website and I am hopeful that the complete and accurate listing of all states will be forthcoming soon. NRA research indicates that, in addition to the states listed on the DPS website as of today, Louisiana, Nevada, New Mexico and Oregon all have "similar" issuance criteria and are, thus, valid in Alaska and should be added based on AS §18.65.748 (1). Idaho, Indiana, Kentucky and Montana all recognize Alaska permits and are, thus, valid in Alaska and should be added based on AS §18.65.748 (2).

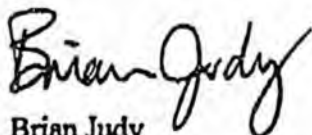
The DPS website also lists "possible" reciprocity states. Among those listed are Arkansas, Georgia, Mississippi and Tennessee, all of which are actively entering into reciprocity agreements and would most assuredly respond favorably to contact by your department. New Hampshire is also in the process of entering into reciprocity agreements, but, it appears, not as aggressively as the aforementioned states.

Confidentiality

The original concealed handgun permit law was passed in 1994 and included specific language in AS §18.65.770 to limit access to the information regarding permit holders compiled by DPS. The regulations promulgated in response to the new law appropriately included 13 AAC 30.800 to accurately reflect legislative intent. Because Senate Bill 294 made no change to §18.65.770, the NRA believes there should be no change to the corresponding regulation. The confidentiality of private information, particularly relating to firearm ownership, is one of the absolute foremost concerns of NRA members and all law-abiding firearm owners. It is the nature of regulations that they are somewhat redundant as they mirror the statutes which they serve to implement. Therefore, regardless of the fact that there may be confidentiality provisions which "already exist in statute," as stated in the DPS notice, NRA is opposed to the repeal of 13 AAC 30.800.

The National Rifle Association, on behalf of the membership, would like to thank the Department of Public Safety, in advance, for its consideration of these comments. If we can be of assistance in providing information or helping in any way to bring the DPS website up to date with regard to the recognition of other states' permits, please don't hesitate to contact me.

Sincerely,



Brian Judy
Alaska State Liaison

cc: Senator Robin Taylor
Senator Rick Halford
Senator Lyda Green
Representative Jeannette James
Wayne Anthony Ross, Attorney-at-Law and NRA Director
Alaska Outdoor Council

QUESTIONS FOR DPS

1) Which states has DPS determined, per AS § 18.65.748(2), grant "reciprocity" to Alaska permit holders?

A: Arizona, Florida, Michigan, North Dakota, Oklahoma, Utah and Wyoming according to the DPS website.

2) The DPS website lists seven states from which Alaska recognizes permits. For six of these (Arizona, Florida, North Dakota, Oklahoma, Utah and Wyoming), the website indicates it is by agreement. On what basis does Alaska recognize the seventh state on your list, Michigan?

A: ??? Could be based on agreement, "similar" laws or that MI recognizes Alaska.

4) What criteria did DPS use to promulgate the current list?

A: ???

5) In your opinion, legally, are there any other states from which Alaska recognizes permits?

A: ??? Should be yes. AS § 18.65.748 provides that Alaska recognizes permits from states with similar permit requirements AND from states which recognize Alaska permits.

6) Doesn't AS § 18.65.748(1) specify that a person with a permit, from a state with permit requirements "similar" to those in Alaska law, is a permittee under Alaska law?

A: Yes.

7) Doesn't AS § 18.65.748(2) specify that a person with a permit, from a state which recognizes Alaska permits, is a permittee under Alaska law?

A: Yes.

8) Are there any states, other than the seven listed on the DPS website, which currently recognize Alaska permits?

A: Yes, Idaho, Indiana, Kentucky and Montana.

9) Are there any states, other than the seven listed on the DPS website, which have similar permit requirements to Alaska?

A: ??? Somewhat subjective but, Louisiana, Nevada, New Mexico and Oregon are similar.

10) Is it true that any non-resident who can legally possess firearms can lawfully carry openly in Alaska?

A: Yes

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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

RECEIVED

FEB 7 2002

Ans'd.....



January 31, 2002

Senator Robin Taylor
State Capitol
Juneau, AK 99801-1182

Dear Senator Taylor:

I am writing you on behalf of the Alaska Peace Officers Association (APOA) State Board of Directors, who recently met and discussed proposed legislation for this legislative session.

APOA discussed Senate Bill 242 (22-LS1285\C) relating to concealed handgun permittees from another state and wanted to address some concerns we have regarding this bill.

Although we understand and do not object to the spirit of this bill, we are concerned that the methods of screening concealed handgun permit candidates by other states might not be as thorough and comprehensive as the State of Alaska. This relaxed standard might therefore allow a permittee of another state an Alaska permit when he or she might not necessarily meet Alaska's criteria.

Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the discussion and perhaps revision of this bill.

Sincerely,

Leo Brandlen
State President

Business Manager

Joseph Young
Anchorage

Board of Directors

Leo Brandlen, President
Anchorage

Chuck Kopp, Vice President
Kenai

Michael Corkill, Past President
Mesa, AZ

Kim Wannamaker, Member
Kenai
Pres. Kenai Chapter

Terry Games, Member
Anchorage
Pres. Anchorage Chapter

Angella Long, Member
Wasilla
Pres. Mat-Su Chapter

Lonnie Hatman, Member
Fairbanks
Pres. Farthest North Chapter

Jerry Nankervis, Member
Juneau
Pres. Capital City Chapter

Andrea Jacobson, Member
Ketchikan
Pres. First City Chapter

James See, Member
Craig
Pres. Prince of Wales Chapter

John Lucking, Jr., Member
Unalaska
Pres. Aleutian Islands Chapter

Thecla LaLonde, Member
Wrangell
Pres. Wrangell Chapter

SB

263

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 263(L&C)
(S) Publish Date: 2/13/02

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Real Property Conveyances BRU _____
Component _____
Sponsor Senator Leman
Requester Senate Labor & Commerce Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: SENATE LABOR & COMMERCE COMMITTEE Phone 465-4993
Division _____ Date/Time _____
Approved by: /s/ Senator Stevens, Chair Date 2/13/02
Agency _____

During Session, January - May:
State Capitol, Room 115
Juneau, Alaska 99801
(907) 465-2095
465-3810 FAX



During Interim, June - December:
716 W 4th Ave, Suite 520
Anchorage, Alaska 99501
(907) 269-0240
269-0242 FAX

Senator Loren Lemar

Sponsor Statement CS SB 263(L&C): Real Property Conveyances

This legislation would cure an otherwise obscure common law rule that has created a problem for Alaska landowners, including Alaska Native Claims Settlement Act (ANCSA) corporations. Changes in the Senate Labor and Commerce Committee further narrow the effect of the legislation by exempting quitclaim deed conveyances by state agencies or by a municipality.

Under the ANCSA, village corporations own the surface estate to lands conveyed under that law. Regional corporations own the subsurface estate. Some village corporations have conveyed some of their lands to shareholders. Those shareholders currently have no right to use or disturb the subsurface, and some may be technically trespassing on regional corporation property.

Regional Corporations would like to solve this problem by granting the Village Corporations a limited easement to disturb the subsurface for (in most cases) residential use, and have that easement then pass automatically to the resident.

The old common law rule allows this automatic pass through from the regional corporation to the village corporation to the shareholder to happen only if the village had originally conveyed the land to the shareholders by *warranty* deed. Unfortunately, the village corporations used *quitclaim* deeds. There is no practical reason to treat these two types of deeds differently for this purpose, and so the enclosed legislation solves the problem by allowing this automatic pass-through of so-called "after acquired rights" to occur regardless of which kind of deed is employed.

Contact: Annette Kreitzer, Staff to Senator Lemar

Senator_Loren_Lemar

**SPONSOR
STATEMENT**

Updated February 13, 2002

cans.org/Lemar.htm



Senator Loren Leman

FREQUENTLY ASKED QUESTIONS ABOUT CS SB 263(L&C): REAL PROPERTY CONVEYANCES

- 1) ***What is the meaning of the phrase "in fee or in fee simple" in the proposed legislation?*** As Alaska law describes it, a quitclaim deed conveys "fee" title, (AS 34.15.040(b) while a warranty deed conveys "fee simple" title (AS 34.15.030(b). Thus, by saying that after-acquired property rights will automatically pass to the grantee whenever the prior conveyance was "fee or fee simple" title, the bill is saying that either a quitclaim or warranty deed will serve to pass after-acquired interests.
- 2) ***What is the difference between a quitclaim deed and a warranty deed?*** A quitclaim deed only passes whatever title (if any) that the grantor might possess, while the latter actually warrants that the grantor has fee simple title to the property.
- 3) ***How would this legislation solve the Native conveyance issue to which it is addressed?*** Under ANCSA, while village corporations own the surface estate to lands conveyed under that law, regional corporations own the subsurface estate. Because these village/shareholder conveyances were almost always done by quitclaim deed, an easement granted now to the village corporation would not automatically pass to the individual shareholder grantees, unless the law were changed in the manner provided in the legislation.
- 4) ***How does Section 2 affect the legislation?*** Section 2 provides that the bill applies only to title or interest that is acquired after the legislation is enacted. The "title or interest" to which the section refers is the after-acquired interest or subsurface easement to be granted to the village corporations. That easement would be granted only after the bill is enacted, and therefore the bill would serve to pass that easement on to the shareholders. An amendment in the Senate Labor & Commerce Committee clarifies that SB 263 excludes quitclaim deed conveyances by state agencies or by a municipality.

WITNESS LIST
SB 263: Acquisition of Title
Senator Leman, Sponsor

Senator Leman (if delayed, Annette Kreitzer, Staff to Senator Leman)

Rick Harris, Sr. Vice President Resources for Sealaska

Jon Tillinghast, Simpson, Tillinghast, Sorensen & Longenbaugh

Terry Bannister, Legal Counsel, Legislative Affairs Agency

**Information
Statement**

SB

271

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 271
 (S) Publish Date: 5/1/02
 Dept. Affected: Natural Resources
 BRU: Minerals, Land & Water Dev
 Component: Land Sales/Muni Ent.
 Component Number: 2465

Revision Date/Time (Note if correction): _____
 Title: MARINE AND RAIL TRANSPORTATION
AUTHORITY
 Sponsor: Sens. WARD, Austerman, Cowdery, Taylor
 Requester: (S) TRA

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	115.5	254.1	278.1	278.1	278.1	278.1
Travel	10.0	15.0	15.0	15.0	15.0	15.0
Contractual	50.0	1,500.0	1,500.0	1,500.0	1,500.0	1,500.0
Supplies	10.0	5.0	5.0	5.0	5.0	5.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	185.5	1,774.1	1,798.1	1,798.1	1,798.1	1,798.1

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	185.5	1,774.1	1,798.1	1,398.1	1,198.1	998.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other I/A M&RT Fund (estimated)				400.0	600.0	800.0
TOTAL	185.5	1,774.1	1,798.1	1,798.1	1,798.1	1,798.1

Estimate of any current year (FY2002) cost: none

Check this box (X) if funding for this bill is included in the Governor's FY2003 budget proposal:

POSITIONS

Full-time	4	5	5	5	5	5
Part-time			1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This fiscal note is the minimum necessary for DNR to process land selections and conveyances to the Marine and Rail Transportation Fund. Costs could be higher depending on what lands are selected and the level of controversy relating to individual parcels. Most costs for the conveyance work will be paid for by the Transportation Fund using Interagency Receipts; however, this money still must come from state general funds for the first several years as the Transportation Fund will have no revenue.

The fiscal note assumes the Constitutional amendment that is needed to enable the fund is (cont.)

Prepared by: Bob Loeffler
 Division: Mining, Land and Water
 Approved by: Pat Pourchot
 Agency: Natural Resources

Phone 269-8600
 Date/Time 26-Feb-02
 Date 26-Feb-02

ANALYSIS: SB 271 #2 (continued)

approved by the voters in November 2002, and that the Transportation Fund and DNR begin the process to identify and transfer lands in January 2003 (FY 03). For FY 03, DNR staff will include 6 mos. of a Natural Resource Manager I, 6 mos. for two Natural Resource Officer (NRO) II, and 6 mos. NRO I who will help identify parcels for Transportation Fund selection, check land status and land records, prepare public notice, respond to public inquiries, negotiate with the Transportation Fund, and perform other tasks to prepare land lists. Starting in FY 04, the four positions are funded FT and costs also include 6 mos. for a Land Surveyor I to prepare survey instructions and contracts for survey. Large contractual expenditures starting in FY 04 reflect the cost to survey parcels. Survey costs assume average parcel size of 1000 acres and that only half of the parcels require survey. FY 05 and following years include the above costs, plus costs to issue title documents (6 mos. of an NRO I, plus recording fees).

For FY 03-05, the fiscal note assumes that all costs will be paid from the general fund as the Marine and Rail Transportation Fund will not generate revenues until at least some revenue-generating lands are transferred. Starting in FY 06, the analysis assumes part of the costs to implement this legislation will be paid by the Transportation Fund.

Not included in the DNR fiscal note are the costs to create an entirely new land management agency for the Marine and Rail Transportation Fund. Under SB 271, this land management agency would be housed within DOTPF. Minimum cost of such a land office will be \$500,000-\$1 million/year, with most of the initial funding coming from the general fund.

* Note: It is impossible to project how much revenue these conveyances will generate for the Marine and Rail Transportation Fund, and will be lost to the state general fund, without knowing exactly what lands will be transferred. However, it can be assumed the Marine and Rail Fund will select the most valuable parcels it can find. The effect is to divert a significant revenue stream out of the general fund, where it would have been available for those public purposes the Legislature deemed most important in a given year, into the hands of the Marine and Rail Transportation Fund for strictly railroad and ferry purposes. Also, by removing the most valuable parcels from the state's asset base, the bill reduces one of the most important incentives for local government to incorporate: the opportunity to select top-quality commercial, residential, and industrial land for municipal ownership under AS 29.65.

Personal Services New Position Detail

DRAFT

Department of Natural Resources

Scenario: DNR FY2003 Fiscal Notes - for Positions (2481)
 Component: Land Sales & Municipal Entitlements (2456)
 BRU Name: Minerals, Land, and Water Development (330)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs																													
10-#078	Natural Resource Mgr I	FT	A	GG	Anchorage	2A	18 C	6.0		23,280	140	0	8,607	32,027																													
Justification: SB271						Funding Detail: <table border="0"> <tr> <td>1004</td> <td>General Fund Receipts</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>100.00%</td> <td>32,027</td> </tr> <tr> <td colspan="12" style="text-align: right;">Total Funding:</td> <td>100.00%</td> <td>32,027</td> </tr> </table>									1004	General Fund Receipts												100.00%	32,027	Total Funding:												100.00%	32,027
1004	General Fund Receipts												100.00%	32,027																													
Total Funding:												100.00%	32,027																														
10-#079	Natural Resource Off II	FT	A	GG	Anchorage	2A	16 D	6.0		20,964	126	0	8,133	29,223																													
Justification: SB271						Funding Detail: <table border="0"> <tr> <td>1004</td> <td>General Fund Receipts</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>100.00%</td> <td>29,223</td> </tr> <tr> <td colspan="12" style="text-align: right;">Total Funding:</td> <td>100.00%</td> <td>29,223</td> </tr> </table>									1004	General Fund Receipts												100.00%	29,223	Total Funding:												100.00%	29,223
1004	General Fund Receipts												100.00%	29,223																													
Total Funding:												100.00%	29,223																														
10-#080	Natural Resource Off I	FT	A	GG	Anchorage	2A	14 C	6.0		17,574	106	0	7,438	25,118																													
Justification: SB271						Funding Detail: <table border="0"> <tr> <td>1004</td> <td>General Fund Receipts</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>100.00%</td> <td>25,118</td> </tr> <tr> <td colspan="12" style="text-align: right;">Total Funding:</td> <td>100.00%</td> <td>25,118</td> </tr> </table>									1004	General Fund Receipts												100.00%	25,118	Total Funding:												100.00%	25,118
1004	General Fund Receipts												100.00%	25,118																													
Total Funding:												100.00%	25,118																														
10-#081	Natural Resource Off II	FT	A	GG	Anchorage	2A	16 D	6.0		20,964	126	0	8,133	29,223																													
Justification: SB271						Funding Detail: <table border="0"> <tr> <td>1004</td> <td>General Fund Receipts</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>100.00%</td> <td>29,223</td> </tr> <tr> <td colspan="12" style="text-align: right;">Total Funding:</td> <td>100.00%</td> <td>29,223</td> </tr> </table>									1004	General Fund Receipts												100.00%	29,223	Total Funding:												100.00%	29,223
1004	General Fund Receipts												100.00%	29,223																													
Total Funding:												100.00%	29,223																														

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

Personal Services New Position Detail

Department of Natural Resources

DRAFT

Scenario: DNR FY2003 Fiscal Notes - for Positions (2481)
Component: Land Sales & Municipal Entitlements (2456)
BRU Name: Minerals, Land, and Water Development (330)

Component Summary:

Total New Positions: 4

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	115,591
Total Funding:	100.00%	115,591

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 271
 (S) Publish Date: 5/1/02

Revision Date/Time (Note if correctic _____ Dept. Affected: _____
 Title Alaska Marine and Rail Transport Authority BRU _____
 Component Alaska Railroad Corporation _____
 Sponsor Senator Ward _____
 Requester Senate Transportation Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	1,460.4	1,426.8	1,426.8	1,426.8	1,426.8	1,426.8
Travel	80.0	72.0	74.2	76.4	78.7	81.0
Contractual	3,589.5	3,489.5	3,594.2	3,702.0	3,813.1	3,927.5
Supplies	30.0	30.9	31.8	32.8	33.8	34.8
Equipment	126.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	5,285.9	5,019.2	5,127.0	5,238.0	5,352.3	5,470.1

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

CHANGE IN ARRC REVENUES	(11,000.0)	(11,260.0)	(11,590.0)	(11,940.0)	(12,350.0)	(12,850.0)
--------------------------------	-------------------	-------------------	-------------------	-------------------	-------------------	-------------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	5,285.9	5,019.2	5,127.0	5,238.0	5,352.3	5,470.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Bond Proceeds						
TOTAL	5,285.9	5,019.2	5,127.0	5,238.0	5,352.3	5,470.1

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal

POSITIONS

Full-time	18	18	18	18	18	18
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached sheet.

Prepared by: Bill O'Leary, Vice President, Finance, Chief Finance Officer
 Division Alaska Railroad Corporation
 Approved by: Deborah B. Sedwick, Commissioner
 Agency Department of Community & Economic Development

Phone 907-265-2516
 Date/Time 2/26/02 11:22 AM
 Date 2/26/2002

(Revised 9/2001 OMB)

SB 271 #1 Assumptions:

The proposed legislation appears to envision three major administrative units comprising the Authority – the Alaska Marine Highway System (AMHS), the Alaska Railroad Corporation (ARRC), and the central Authority executive office (System Office). This fiscal note discusses financial impacts to ARRC and the System Office; AMHS' impacts will be addressed through its fiscal note submission.

The legislation creates a Board of Directors of the Authority and abolishes the current ARRC Board. It is assumed that the cost of this Authority Board will be roughly equivalent to that of the existing ARRC Board; as such, no incremental cost is presented.

The legislation also creates a Board to provide oversight of the fund where the revenues of the Authority would be constitutionally dedicated. This eight member Board's compensation and travel expenses are presented in the fiscal note; eight three-day meetings are estimated for the first year due to the transition/implementation, with six two-day meetings necessary in subsequent years.

With regard to funding the System Office, it is assumed that the existing ARRC CEO and administrative head of AMHS will assume the Chief Operating Officer positions identified in the proposed legislation. As such, a new position, Authority CEO will be necessary. With this position will also come an administrative assistant position. Further, it is assumed a Chief Financial Officer (CFO) for the Authority will be necessary to ensure coordinated financial management of the two operating divisions. This fiscal note also assumes adding 15 additional staff for real estate activities, in addition to the 9 ARRC Real Estate Division employees that would be transferred to the System Office. Travel expenses and office space/supplies are also included. System Office contractual expenses are estimated conservatively and include such items as the incremental cost of auditing the new agency as well as consulting efforts through transition. Contractual services related to the real estate group include estimates for platting, surveying, and transferring the land from DNR to the new Authority. Significant contract legal costs would also be incurred.

No revenue is assumed to be received from the lands to be transferred during the time of the fiscal note (FY 03 – 08).

Fiscal Impact to ARRC

The most direct impact to ARRC will be the loss of the real estate revenue that has served as the primary driver of the corporation's net income for the last decade. The transfer of this income, estimated at \$11 million in 2003, will cripple ARRC's internally funded capital program. To this point, all of the Railroad's earnings have been reinvested in the corporation's infrastructure in an effort to lessen the considerable amount of deferred maintenance that is a reality at ARRC. Removing this income stream from the corporation will have the effect of cutting ARRC's necessary capital program, both from an internal funding perspective and from a federal perspective, as internal funds are necessary to provide required match to federal grant funds received by the corporation. As was the case under federal ownership, the Railroad will soon begin slipping back into decline from a safety and customer service perspective.

1. ARRC's 9 real estate employees currently are responsible for 2,500 acres of leased land out of a total of approximately 17,000 acres available. Adding 500,000 acres of land will require a significant ramping up of the real estate function; as such, this estimated addition of 15 employees is considered very conservative.

2. The amount included in the fiscal note is based upon a bill analysis prepared in 1999 by DNR for proposed transfer of lands to the UA System and is considered a conservative figure.



SENATOR JERRY WARD

ALASKA STATE LEGISLATURE

SPONSOR STATEMENT

Committee Substitute for Senate Bill No. 271(TRA)

“An Act establishing the Alaska Marine Highway Authority; establishing the marine highway transportation fund; relating to ferries and ferry terminals; and providing for an effective date.”

The intent of this Act is to establish a state-owned authority that would be directly responsible for the operation and management of the Alaska Marine Highway. This bill would also convey 500,000 acres of land to the authority.

The Alaska Marine Highway was created under the authority of the Federal Government in 1963 and was not given a land base. For the past several years the Alaska Marine Highway has relied on general funds for costs because of the lack of a capital equity base in order to make it self-sufficient. Creating an authority and conveying an additional 500,000 acres of land would allow the excess land to generate revenue and provide a stable funding base for the Alaska Marine Highway Authority. The idea is to reduce the requirements to fund the Alaska Marine Highway through the general fund.

The authority will operate under the name “Alaska Marine Highway Authority” and will be a public corporation of the state and a division of the Department of Transportation and Public Facilities. The authority shall prepare a comprehensive long-range plan for the development and improvement of the Alaska Marine Highway system. The authority will make all of its financial records available to the legislature and an appointee of the Governor and shall submit an annual budget to the legislature through the governor.

The primary duties of the authority will be to assist residents, businesses and communities of the state to obtain the highest quality of marine passenger and freight services. The authority will be responsible to encourage and integrate with other public and private carriers in and outside the state to provide the highest quality of service within the state. The authority is required to employ Alaskan residents to the highest legal level possible.

The fund will be able to receive gifts, bequests, contributions of cash or other assets and additional land grants from the state. The proceeds of disposal by the Department of Natural Resources shall be credited to the funds from which the purchase of the land was originally made.

It is my hope that CSSB 271 becomes legislation in order to ensure a self sufficient, long-term transportation network that serves all Alaskans.

SB

273

Alaska State Legislature

SENATOR
BEN STEVENS
716 WEST 4TH AVENUE
ANCHORAGE, AK
99501-2133
(907) 269-0200
FAX (907) 269-0204



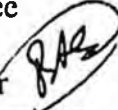
Session:
STATE CAPITOL
JUNEAU, AK
99801-1182
(907) 465-4993
FAX (907) 465-3872

Senate District J

Memorandum

February 7, 2002

To: Senator Robin Taylor, Chair
Senate Judiciary Committee

From: Senator Ben Stevens, Chair 
Labor and Commerce Committee

Subject: Request for hearing SB 273

Please schedule a hearing for Senate Bill 273, an act extending the termination date of the Board of Governors of the Alaska Bar association, at your earliest convenience.

SB 273 will extend the Board of Governors of the Alaska Bar Association for another four years to June 30, 2006. The Board of Governors of the Alaska Bar Association is set to expire June 30, 2002 under AS.03.101, Termination of State Boards and Commissions. If the legislature does not act to extend the Board it would have one year, until June 30, 2003, to administratively conclude its affairs.

Request for Hearing

Sponsor Statement

SB 273 – Extend Board of Governors of the Alaska Bar Association

The practice of law in the State of Alaska is regulated by the Board of Governors of the Alaska Bar Association. The Alaska Bar association was established in 1955 to ensure that only qualified members of the legal profession of good moral character are allowed to practice law in this state.

The Board consists of twelve members, including nine attorneys elected by the active membership of the Alaska Bar Association and three non-attorney public members that are appointed by the governor and confirmed by a joint session of the legislature.

The Alaska Bar Association is scheduled to terminate June 30, 2002 under AS 08.03.010, Termination of State Boards and Commissions. If the legislature does not act the board would have one year, until June 30, 2003 to administratively conclude its operations.

In accordance with the provisions of Title 24 and 44 of the Alaska Statutes, Legislative Budget and Audit conducted a sunset review of the Alaska Bar Association. It is the opinion of Legislative Budget and Audit that the Board of Governors of the Alaska Bar Association, through the Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for the investigation of complaints and has established a disciplinary process designed to ensure licensed individuals act in a competent and professional manner. Legislative Budget and Audit recommends that the termination of the Alaska Bar Association be extended four years to June 30, 2006.

SB

278

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 278
 () Publish Date: 2/4/2002

Revision Date/Time (Note if correction):
 Title Taking property by eminent domain
 Sponsor Senator Torgerson
 Requester Senate Comm. and Reg. Affairs

Dept. Affected:
 BRU Alaska Court System
 Component Trial Courts
 Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of SB 278.

Prepared by: Douglas Wooliver
 Division: Alaska Court System
 Approved by: Stephanie Cole
 Agency: Alaska Court System

Phone 463-4750
 Date/Time 2/28/02 10:10 AM
 Date 2/28/2002



ALASKA STATE LEGISLATURE

SENATOR JOHN TORGERSON

CHAIR, SENATE RESOURCES COMMITTEE

CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CHAIR, JOINT COMMITTEE ON NATURAL GAS PIPELINES

Session:

State Capitol, Room 427, Juneau, AK 99801
Telephone 907/465-2828 Fax 907/465-4779

District:

45457 Kenai Spur Hwy.; Suite 101B, Soldotna, AK 99669
Telephone 907/260-3042 Fax 907/260-3044

MEMORANDUM

To: Senator Robin Taylor, Chair
Senate Judiciary Committee

From: Senator John Torgerson

Date: February 28, 2002

Re: Hearing request for SB 278
"Taking Property By Eminent Domain"

Please accept this memorandum as a request to schedule SB 278 for a hearing in the Senate Judiciary Committee at your earliest convenience. This bill requires the condemning authority to make a "reasonable and diligent effort" when negotiating the acquisition of property through eminent domain. The intent is to place the condemning authority and the landowner in an equal bargaining position in order to promote productive negotiations, and facilitate dialog over reasonable concerns held by involved parties.

I have enclosed the following back-up information for your review and inclusion in the bill packets:

- SB 278
- Alaska Court System fiscal note
- Sponsor Statement
- Sectional Analysis
- State-by-State Background Information
- AK State Chamber of Commerce support statement

Thank you for your consideration of this request.

REPRESENTING THE KENAI PENINSULA

*Anchor Point Bear Creek Clam Gulch Cooper Landing Crown Point Fritz Creek Happy Valley Halibut Cove
Homer Hope Kachemak City Kachemak Selo Kasilof Lowell Point Moose Pass Nanwalek Nikolaevsk
Ninilchik Port Graham Razdolna Seward Seldovia Soldotna Stariski Sterling Voznesenka*

Request for Hearing



ALASKA STATE LEGISLATURE

SENATOR JOHN TORGERSON

CHAIR, SENATE RESOURCES COMMITTEE

CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CHAIR, JOINT COMMITTEE ON NATURAL GAS PIPELINES

Session:

State Capitol, Room 427, Juneau, AK 99801
Telephone 907/465-2828 Fax 907/465-4779

District:

45457 Kenai Spur Hwy.; Suite 101B, Soldotna, AK 99669
Telephone 907/260-3042 Fax 907/260-3044

Sponsor Statement Senate Bill 278

Taking Property By Eminent Domain

The enactment of this bill will bring fairness and expediency to government and other condemning authorities that require the acquisition of private lands for public uses. This bill is not trying to remove the authority of the state to take land by eminent domain. It will simply add a provision to ensure there is a good faith negotiation between government agencies and property owners before land is claimed under eminent domain.

It is reasonable to require a government entity to make a good faith effort to negotiate with the landowner on a value and price prior to taking the property. Someone that does not have the financial ability or an understanding of the legal process could be overwhelmed with the bureaucracy and be at a disadvantage in trying to protect his or her property rights.

By requiring a good faith effort to purchase and justify the state's authority of eminent domain, the landowner will have the benefit of full disclosure of information used by the state to determine the public purpose and legitimate value before property can be taken.

REPRESENTING THE KENAI PENINSULA

*Anchor Point Bear Creek Clam Gulch Cooper Landing Crown Point Fritz Creek Happy Valley Halibut Cove
Homer Hope Kachemak City Kachemak Selo Kaslof Lowell Point Moose Pass Nanwalek Nikolaevsk
Ninilchik Port Graham Razdolna Seward Seldovia Soldotna Stariski Sterling Voznesenka*

**SPONSOR
STATEMENT**



ALASKA STATE LEGISLATURE

SENATOR JOHN TORGERSON

CHAIR, SENATE RESOURCES COMMITTEE

CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CHAIR, JOINT COMMITTEE ON NATURAL GAS PIPELINES

Session:
State Capitol, Room 427, Juneau, AK 99801
Telephone 907/465-2828 Fax 907/465-4779

District:
45457 Kenai Spur Hwy. Suite 101B,
Soldotna, AK 99669
Telephone 907/260-3042 Fax 907/260-3044

Sectional Analysis of SB 278

Title 09.55.240-460 constitutes the statutory proceedings regarding the state's authority of eminent domain. Under present law, property owners whose land is to be condemned are faced with an unfairly steep barrier when trying to negotiate a fair settlement with the state. This bill will require that the state make a "reasonable and diligent effort" to negotiate equitably when trying to purchase land from private citizens through eminent domain.

Sec. 1: AS 09.55.270 lists the matters that any condemning authority must prove before it can condemn property through a judicial eminent domain complaint. The statute is amended by adding subsection (4) that requires the state to make a "reasonable and diligent effort" when trying to purchase land through eminent domain. Subsection (4) defines a "reasonable and diligent effort" as one that invites the property owner to secure an appraisal from a real estate appraiser certified under AS 08.87 and as an offer to purchase the property for its full appraised value plus cost or an explanation to the property owner why the full appraised value is not being offered.

Sec. 2: AS 09.55.420-460 deals with "declarations of taking" which differ from eminent domain complaints in that once a declaration is filed, the property is taken immediately, rather than after judicial proceedings are completed. Before 1976, the state could take land under a declaration of taking without proving the necessity for the taking. In 1976, however, the legislature added subsection (7), which required the declaration to contain a statement explaining how the taking was necessary. Section 2 further amends the statute to add a subsection (8) to include a statement verifying that, where possible, the condemning authority has made a "reasonable and diligent effort" to purchase the land.

Sec. 3: AS 09.55.460 authorizes the court to divest the authority of its new title if it is ultimately shown that the taking was not necessary. Section 3 would amend AS 09.55.460(b) by authorizing the court to also divest the condemnor of title when it was ultimately shown that a "reasonable and diligent effort" to purchase the property had not

REPRESENTING THE KENAI PENINSULA

Anchor Point Bear Creek Clam Gulch Cooper Landing Crown Point Fritz Creek Happy Valley Halibut Cove Homer Hope Kachemak City Kachemak Selo Kasilof Lowell Point Moose Pass Nanwalek Nikolaevs Ninilchik Port Graham Razdolna Seward Seldovia Soldotna Stariski Sterling Voznesenka

Sponsor
Statement/Sectional

been made. Without Section 3, Section 2 of the bill would be meaningless, since the state would be obliged to make a statement that the "reasonable and diligent effort" requirement had been met but the landowner would have no remedy in any case where the statement proved untrue.

Sec. 4: Sets an effective date of the Act.



ALASKA ASSOCIATION OF REALTORS, INC.
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503
Telephone 907-563-7133 • Fax 907-563-8476

March 11, 2002

Senator John Torgerson
State Capitol
Juneau, Alaska 99801-1182

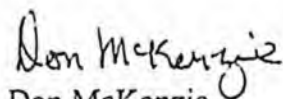
RE: SB 278 – An Act requiring a good faith effort to purchase property before that property is taken through eminent domain, and providing for an effective date.

Dear Senator Torgerson,

The Alaska Association of REALTORS with over 1,100 members statewide supports Senate Bill 278. We agreed that before property can be taken, the property owner should have the opportunity to secure an appraisal from a real estate appraiser. The condemnor should either offer to purchase the property for its full appraised value as determined by the property owner's appraisal plus the cost of the appraisal or explain to the property owner why the full appraised value is not being offered.

The Alaska Association of REALTORS encourages the passage of Senate Bill 278.

Sincerely,


Don McKenzie
President



Alaska State Chamber of Commerce

Position 2002 - 5

Compensation for Regulatory Takings

The Alaska State Chamber of Commerce urges the Governor, his Administration and the Legislature to pass legislation to clarify that property owners be compensated at fair market value for property taken by regulation.

ADOPTED

November 1, 2001

BY

Pamela La Bolle



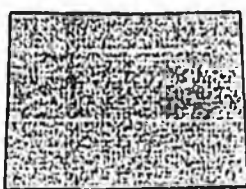

Pamela La Bolle
President

BY

Helvi K. Sandvik

Helvi Sandvik
Chair

Appendix A: The Requirement to Negotiate in Other States

	<u>State</u>	<u>Citation</u>	<u>Language</u>
	Model Eminent Domain Code	Uniform Law Commissioner's Model Eminent Domain Code 1974 Act §306	<i>Except as provided in Section 308, an action to condemn property may not be maintained over timely objection by the owner unless the condemnor made a good faith effort to acquire property by purchase before commencing the action.</i>
	Alabama	Ala. Code §18-1A-22	<i>Before commencing a condemnation action, the condemnor shall establish an amount based on an appraisal which it believes to be just compensation therefor and promptly shall submit to the owner an offer to acquire the property for the full amount so established. The amount shall not be less than the condemnor's established amount of just compensation for the property.</i>
	Colorado	Colo. Rev. Stat. §38-1-102	<i>In all cases where the right to take private property for public or private use without the owner's consent...is conferred by general laws...and the compensation to be paid for, in respect of property sought to be appropriated or damaged for the purposes mentioned, cannot be agreed upon by the parties interested; or in the case the owner of the property is incapable of consenting, or his name or residence is unknown, or he is a nonresident of the state, it is lawful for the party authorized to take or damage the property to apply to the judge....</i>
	Connecticut	Conn. Gen. Stat. §48-12	<i>The procedure for condemning land or other property for any of the purposes specified in sections..., if those desiring to take such property cannot agree with the owner upon the amount to be paid him for any property taken, shall be as follows:</i>



Idaho

Idaho Code
§7-707(6)

The complaint [for condemnation] must contain:

...
(6) In all cases where the owner of the lands sought to be taken resides in the county in which said lands are situated, a statement that the plaintiff has sought, in good faith, to purchase the lands so sought to be taken, or settle with the owner for the damages which might result to his property from the taking thereof, and was unable to make any reasonable bargain therefor, or settlement of such damages, but in all other cases these facts need not be alleged in the complaint, or proved.



Illinois

Ill. Rev. Stat.
§5/7-102

Where the right to take private property for public use...has been heretofore and shall hereafter be conferred by general law or special charter...and the compensation to be paid for or in respect of the property sought to be appropriated or damaged for the purposes mentioned cannot be agreed upon by the parties interested, or in case the owner of the property is incapable of consenting, or the owner's name or residence is unknown, or the owner is a nonresident of the state, the party authorized to take or damage the property...may apply to the circuit court...



Indiana

Ind. Code
§32-11-1-1

Before proceeding to condemn, such person, corporation or other body may enter upon any land for the purpose of examining and surveying the property sought to be appropriated or right sought to be acquired; and shall make an effort to purchase for the use intended such lands, right-of-way, easement or other interest therein or other property or right.

CORRECTION

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



Central Microfilm Services
Department of Education & Early Development
State of Alaska



Idaho

Idaho Code
§7-707(6)

The complaint [for condemnation] must contain:

...
(6) In all cases where the owner of the lands sought to be taken resides in the county in which said lands are situated, a statement that the plaintiff has sought, in good faith, to purchase the lands so sought to be taken, or settle with the owner for the damages which might result to his property from the taking thereof, and was unable to make any reasonable bargain therefor, or settlement of such damages, but in all other cases these facts need not be alleged in the complaint, or proved.



Illinois

Ill. Rev. Stat.
§5/7-102

Where the right to take private property for public use...has been heretofore and shall hereafter be conferred by general law or special charter...and the compensation to be paid for or in respect of the property sought to be appropriated or damaged for the purposes mentioned cannot be agreed upon by the parties interested, or in case the owner of the property is incapable of consenting, or the owner's name or residence is unknown, or the owner is a nonresident of the state, the party authorized to take or damage the property...may apply to the circuit court...



Indiana

Ind. Code
§32-11-1-1

Before proceeding to condemn, such person, corporation or other body may enter upon any land for the purpose of examining and surveying the property sought to be appropriated or right sought to be acquired; and shall make an effort to purchase for the use intended such lands, right-of-way, easement or other interest therein or other property or right.



Kentucky

Ky. Rev. Stat.
Ann. §416.550

Whenever any condemnor cannot, by agreement with the owner thereof, acquire the property right, privileges or easements needed...the condemnor may condemn such property...It is not a prerequisite to an action to attempt to agree with an owner who is unknown or who, after reasonable effort, cannot be found within the state or with an owner who is under a disability.



Michigan

Mich. Comp.
Laws §213.55

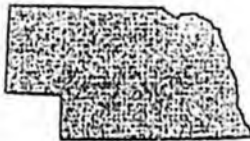
Except as provided in section 25(4), before initiating negotiations for the purchase of property, the agency shall establish an amount which it believes to be just compensation and promptly shall submit to the owner a good faith offer to acquire the property for the full amount so established... If an agency is unable to agree with the owner for the purchase of the property, after making a good faith written offer to purchase the property, the agency may file a complaint for the acquisition of the property in the circuit court in the county in which the property is located.



Missouri

Mo. Rev.
Stat.
§523.010

In case land, or other property, is sought to be appropriated...and such corporation and the owners cannot agree upon the proper compensation to be paid, or in the case the owner is incapable of contracting, be unknown, or be a nonresident of the state, such corporation may apply to the circuit court...



Nebraska

Neb. Rev.
Stat.
§76-704

If any condemnee shall fail to agree with the condemnor with respect to the acquisition of property sought by the condemnor, a petition to condemn the property may be filed by the condemnor in the county court of the county where the property or some part thereof is situated.