

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SL&C 12632

ALASKA STATE LEGISLATURE

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Co-Chair Finance Committee
Vice-Chair Legislative Budget & Audit

Committee Member
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Legislative Council
World Trade & State/Federal Relations

SENATOR LYMAN F. HOFFMAN

SPONSOR STATEMENT

Senate Bill 289 Home Energy

Senate Bill 289 would update and expand the home energy conservation and weatherization programs in the Alaska Housing Finance Corporation (AHFC).

Section 1. AS 18.56.096 (c) refers to the Limitation on power to make or purchase mortgage loans by the Alaska Housing Finance Corporation.

This calls for the removal of the reference to the Alaska Craftsman Home program from this section and it thereby allows AHFC to establish training programs and certifications that are satisfactory to AHFC rather than specifically naming organizations and non-state programs to provide training and certifications.

The current statute refers to training and certifications "that are satisfactory to the corporation". These are normally specified in regulations for the program they govern and guide. This is a better, more flexible administrative process for agencies to use when responding to economic impacts such as the rising cost of fuel across our state especially in Rural Alaska.

Section 2 AS 18.56.410 (c)... refers to the Alaska energy efficient home grant fund located in AHFC.

This calls for the removal of the "consultation with the board of directors of the Alaska Craftsman Home program".

There is statutory reference to a private entity relative to a public program administered by AHFC and it would be more prudent and efficient for AHFC to adopt these guidelines and procedures.

This allows AHFC to be more responsive through existing programs to the changing economic situation in our state. Various organizations and individuals will have ample opportunity to testify during the process on the program design elements and implementation.

Section 3 AS 18.56.850 (a)... refers to the home energy conservation and weatherization program located in AHFC.

This section calls for the removal of references to the Alaska Craftsman Home program (ACHP) and the Energy Rated Homes of Alaska (ERHA) program in statute and adds a reference to energy efficiency in this section. It also removes the reference to low income.

The ACHP and ERHA programs are private corporations that have no regulatory authority relative to the public state programs administered by AHFC. As such their reference in statute is not necessary for the administration by AHFC of its programs that are funded with corporate receipts or state general funds.

The addition of the reference to "Energy efficiency" in this section and the deletion of the reference to "low income" broadens the scope of this program. It allows AHFC to plan, study, implement, and assist Alaskans through existing programs to deal with home energy conservation and weatherization without limiting it to low income.

Low income Alaskans will continue to receive the priority focus of the programs, however. This change would simply allow AHFC to assist a larger number of Alaskans. This broader scope will allow AHFC to design a menu of programs that will address the needs of Alaskans from the neediest to the average Alaskan homeowners relative to residential energy efficiency.

SB 289 provides the necessary language and changes that will facilitate AHFC's administrative process and program implementation of home energy efficiency programs that will be responsive to Alaskans being impacted by high energy costs.

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MEMORANDUM

February 20, 2008

SUBJECT: Home energy conservation and weatherization under AHFC programs; sectional summary - SB 289 (Work Order No. 25-LS1354\C)

TO: Senator Lyman Hoffman
Co-chair of the Senate Finance Committee
Attn: John Weise

FROM: Tamara Brandt Cook
Director *TBC*

Sec. 1. Amends a provision permitting the Alaska Housing Finance Corporation to participate in loans for residential buildings only if certain thermal and lighting energy standards are met by deleting, as a method of showing that the standards are met, proof that a person responsible for the construction has completed a training program of the Alaska Craftsman Home Program or an equivalent training program. Provides that a residential building complies with the energy standards if it has received a rating under a home energy rating system adopted by AHFC. Existing law requires that the rating system be developed by Energy Rated Homes of Alaska.

Sec. 2. Deletes the requirement that AHFC consult with the board of directors of the Alaska Craftsman Home Program before adopting guidelines and procedures for the Alaska energy efficient home grant fund.

Sec. 3. Deletes the requirements that AHFC plan, study, implement, and assist programs for the Alaska Craftsman Home Program and for the Energy Rated Homes of Alaska Program. Substitutes reference to the energy efficiency and weatherization program for a reference to the low income weatherization program.

TBC:med
08-128.med

Prepared for

**COLD CLIMATE HOUSING RESEARCH CENTER
515 7TH AVENUE SUITE 340
FAIRBANKS, AK 99701**

2005 Alaska Housing Assessment: Part I

SEPTEMBER 2005



**INFORMATION INSIGHTS, INC.
212 FRONT STREET, STE. 100
FAIRBANKS, ALASKA 99701**

**605 WEST 2ND AVENUE
ANCHORAGE, ALASKA 99501**

2005 Alaska Housing Assessment: Part I

JUNE 2005

Brian Rogers, Principal Consultant

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Information Insights staff: Robin Barker, Ellen Ganley, Gradon Haehnel, Brenda Holden, Jessica Holden, Nancy Lowe, Sherry Modrow, Debbie Mowrey, Jana Peirce, Susan Pruitt, Sylvan Robb, Tracy Rogers, Bobby Wilken, with the assistance of our temporary surveyors

Alaska Works Partnership

First Alaskans Institute

We express grateful appreciation to all the Alaskans who agreed to complete the survey.

Prepared for

Cold Climate Housing Research Center

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Prepared by

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Executive Summary

This 2005 Alaska Housing Assessment Study was undertaken to determine housing conditions and needs throughout Alaska. In part the study updates similar work completed in 1988 and 1991; in part it expands the knowledge of housing conditions in Alaska. The study was funded by the Alaska Housing Finance Corporation and the Association of Alaska Housing Authorities and was conducted by Information Insights under contract to the Cold Climate Housing Research Center.

The information presented in this study derives from a variety of sources. Major sources include

- the 2000 U.S. Census,
- the 1990 U.S. Census,
- weatherization provided by Alaska Housing Finance Corporation,
- a telephone survey of more than 1,500 households statewide, conducted by Information Insights,
- Department of Labor and Workforce Development Research Section,
- Alaska Housing Market Indicator Reports, 2000 through 2004, published quarterly,
- Native American Housing and Self Determination Act Recipient Data provided by Housing and Urban Development and Regional Housing Authorities, and
- several regional housing authorities.

Major study findings include:

Conditions of overcrowding are estimated based on three levels: 150 square feet per resident, 200 square feet per resident, and 300 square feet per resident. For ease of reading, the middle level is discussed in the narrative portions of the report that address overcrowding. The 200 square foot definition of overcrowding is also used in the detailed estimation of costs. Highlights of costs and need for each level are outlined below.

Costs of housing needed: 150 square feet per resident = overcrowded

- More than 17,000 new housing units are currently needed to meet population growth, relieve overcrowding, and replace substandard housing.
 - ◆ 4,500 of these units are substandard and in need of replacement
 - ◆ More than 13,000 of these units are needed to alleviate overcrowding
 - ◆ More than 700 units of the total are duplicates that are both substandard and also overcrowded, these duplicates are subtracted to arrive at the total of more than 17,000 new units needed
- More than 20,000 units are in need of major repair

- Cost to provide major repairs to substandard homes that are determined to be salvageable is calculated at \$25,000 per unit and totals **\$519 million**
- Cost to replace units that are substandard and not salvageable is **\$873 million**
- Cost to alleviate overcrowding for homes with 150 square feet or fewer per resident is approximately **\$2.87 billion**
 - ◆ Note that the figure of \$2.87 billion assumes that only overcrowded units are replaced.
 - ◆ When duplicates are removed from the total units needed to replace substandard and overcrowded homes the cost is **\$3.66 billion**.
- Total cost to repair, replace and alleviate overcrowding is estimated to be **\$4.18 billion**

Costs of housing needed: 200 square feet per resident = overcrowded

- More than 25,000 new housing units are currently needed to meet population growth, relieve overcrowding, and replace substandard housing.
 - ◆ 4,500 of these units are substandard and in need of replacement
 - ◆ More than 22,000 of these units are needed to alleviate overcrowding
 - ◆ 1,120 units of the total are duplicates that are both substandard and also overcrowded; these duplicates are subtracted to arrive at the total of more than 25,000 new units needed
- More than 20,000 units are in need of major repair
- Cost to provide major repairs to substandard homes that are determined to be salvageable is calculated at \$25,000 per unit and totals **\$519 million**
- Cost to replace units that are substandard and not salvageable is **\$873 million**
- Cost to alleviate overcrowding for homes with 200 square feet or fewer per resident is approximately **\$4.78 billion**.
 - ◆ Note that the figure of \$4.78 billion assumes that only overcrowded units are replaced.
 - ◆ When duplicates are removed from the total units needed to replace substandard and overcrowded homes the cost is **\$5.47 billion**.
- Total cost to repair, replace and alleviate overcrowding is estimated to be **\$5.99 billion**

Costs of housing needed: 300 square feet per resident = overcrowded

- More than 48,000 new housing units are currently needed to meet population growth, relieve overcrowding, and replace substandard housing.
 - ◆ 4,500 of these units are substandard and in need of replacement
 - ◆ Roughly 46,000 of these units are needed to alleviate overcrowding

- ◆ More than 2,000 units of the total are duplicates that are both substandard and also overcrowded, these duplicates are subtracted to arrive at the total of more than 48,000 new units needed.
- More than 20,000 units are in need of major repair
- Cost to provide major repairs to substandard homes that are determined to be salvageable is calculated at \$25,000 per unit and totals \$519 million
- Cost to replace units that are substandard and not salvageable is \$873 million
- Cost to alleviate overcrowding for homes with 300 square feet or fewer per resident is approximately \$9.60 billion
 - ◆ Note that the figure of \$9.60 billion assumes that only overcrowded units are replaced.
 - ◆ When duplicates are removed from the total units needed to replace substandard and overcrowded homes the cost is \$10.05 billion.
- Total cost to repair, replace and alleviate overcrowding is estimated to be \$10.56 billion

Cost of construction is based on regional differences. The state is separated into Alaska Native regions and an average cost per unit assigned to each region. The table showing these amounts is located below; a detailed description of the formula used to arrive at these amounts is located in the cost of construction section.

Census area	Cost per unit	Census area	Cost per unit
Aleutians East Borough	\$316,742	Nome CA	\$229,030
Aleutians West CA	\$316,742	North Slope Borough	\$283,976
Anchorage Municipality	\$168,033	Northwest Arctic Borough	\$225,501
Bethel CA	\$225,501	Prince of Wales-Outer Ketchikan CA	\$166,017
Bristol Bay Borough	\$225,501	Sitka City and Borough	\$166,017
Denali Borough	\$187,693	Skagway-Hoonah-Angoon CA	\$166,017
Fairbanks North Star Borough	\$187,693	Southeast Fairbanks CA	\$187,693
Haines Borough	\$150,894	Valdez-Cordova CA	\$173,074
Juneau City and Borough	\$150,894	Wade Hampton CA	\$383,283
Kenai Peninsula Borough	\$180,636	Wrangell-Petersburg CA	\$147,869

Census area	Cost per unit	Census area	Cost per unit
Ketchikan Gateway Borough	\$147,869	Yakutat City and Borough	\$166,017
Kodiak Island Borough	\$187,189	Yukon-Koyukuk CA	\$283,976
Matanuska-Susitna Borough	\$173,074		

Housing sizes and age

- Calista region has the highest percentage of houses with 500 square feet or less, one in ten houses in the region are this size.
- Statewide just under six percent of homes are less than 500 square feet.
- With the exception of Sealaska, every region in the state saw a decrease in new housing (0 to 10 years) as a percentage of total units.
- Older housing (21 years or more) increased as a percentage of total housing stock in every region, including Sealaska.
- Alaska Native households are getting bigger and the number of residents per house is declining. However, these households continue to be smaller and have more residents per unit than non-Native households.

Housing conditions

- Of the more than 1,500 survey respondents roughly 7.5 percent of respondents indicated that their housing was in need of repair that they were unable to make.
- Five percent of people who live in homes with 300 square feet per resident or fewer also report living in a dwelling that is falling apart and in need of replacement.
- Sixty-eight percent of households with less than \$10,000 annual income report having homes that are drafty.
- Estimated cost to build a housing unit in Alaska ranges from a low of \$47,869 to a high of \$316,742.
- Approximately 10 percent of homes statewide are without running water, down from 39 percent of homes in 1988.

Housing built

- Forty-four percent of new units built between 2000 and 2004 were built in the Municipality of Anchorage.
- Thirty-three percent of new units built between 2000 and 2004 were built in the Matanuska-Susitna Borough.

- Sixty-three percent of new units were single-family units, 37 percent were multi-family units with the remaining one percent being mobile homes.
- The majority of new housing in rural Alaska is built by regional or local Alaska Native housing authorities.

Population and housing dynamics

- The population of the state grew by roughly 77,000 in the ten years between the 1990 and the 2000 Census.
- Between 1990 and 2000 and then again between 2000 and 2004, the population in urban areas has grown while the population in rural areas of the state has declined.
- Of the survey respondents who indicated they lived in a household with less than \$10,000 in annual earnings 83.6 percent were in rural Alaska and an identical 83.6 percent were Native households.
- There are more residents per household in Alaska Native households than in non-Native households.
- Since 1991 the total number of housing units increased in every region of the state with the exception of the Bering Straits region.
- More than 45,000 households in Alaska are potentially eligible for weatherization services.
- The number of people indicating that someone in their household is in need of specialized housing has decreased between 1991 and 2005.
- A larger proportion of households in which a resident is in need of specialized housing are Alaska Native and a larger proportion of them are in rural Alaska.

The 2005 Alaska Housing Assessment Study estimates a need of at least 25,771 new housing units to meet population growth, relieve overcrowding, and replace substandard housing. Major repairs needed for housing units that are substandard but salvageable will require significant funding. Without repairs to these units, they will continue to deteriorate until they need to be replaced. The number of homes in need of major repair is close to 20,000 units.

There are a number of housing units that are both substandard to the point of needing replacement and are also overcrowded. These duplicates were subtracted before cost estimates were made, but it is important to note that the total cost estimate assumes that both issues are addressed at the same time. If policy makers choose to only address overcrowded conditions the cost to do so would be higher than that reported here since the duplicates were subtracted from the total number of overcrowded homes.

Housing construction has failed to keep pace with demand in many parts of the state. Lack of private investment and market activity contribute to the shortage of adequate housing in rural Alaska. A failure to invest in the kinds of housing most needed throughout the state continues to create situations in which people are living in crowded conditions and in homes that are falling into disrepair.

Rural areas of the state have had historically, and continue to have, substandard housing conditions at a significantly higher rate than urban areas. Number of residents per household is higher in rural Alaska and total square footage of those households is lower.

Urban Alaska has a relatively responsive housing market. Demand for new housing units has driven construction of record numbers of new units in urban areas. This demand, fueled in part by population growth, also has caused an increase in the cost of housing. One primary challenge faced by urban Alaska is the lack of affordable housing for low-income people.

Estimates of current housing stock for 2005 begin with the base number of housing units counted in the 2000 Census. We added to this base the number of new housing units reported in the Alaska Housing Market Indicators Report, produced by the Alaska Department of Labor and Workforce Development (DOLWD) research section and published quarterly.

Supplemental information is provided by estimating residential construction activity for each region based on permits issued and estimates published quarterly for years 2000 through 2004 by the U.S. Census Bureau. Residential utility information was utilized to check the accuracy of estimated current housing stock. There are an estimated 278,118 housing units in Alaska in 2005.

Conditions of overcrowding are less prevalent in rural areas than they were 15 years ago but they continue to exist far more frequently than in urban Alaska. Low incomes and the high cost of construction make solving the housing dilemma in rural Alaska particularly challenging. There are an estimated 22,392 households in Alaska in which overcrowded conditions exist. An additional 4,500 housing units were determined to be in such poor condition that replacement is the best solution.

For the purposes of this study, conditions of overcrowding are defined as those units with less than or equal to 200 square feet per household resident. Overcrowding at this level prompts the need for an additional housing unit. Information Insights gathered information on overcrowded conditions as part of the household survey. The 1991 housing assessment estimated need due to overcrowding on housing units with less than or equal to 200 square feet per resident.

Residents were asked also to rate the condition of their home. A housing unit is determined to be in need of replacement due to the condition of the home when respondents indicate that their home is "falling apart". Units that were reported to need major repairs that the household residents were unable to make were rated to be in need of major repair but not in need of replacement. It is important to note that households in need of major repair will become households that need replacement if funding for repair is not provided to assist household residents.

Since many of the housing units that are falling apart or in need of major repair also experience conditions of overcrowding duplicates were removed from the estimates.

Information is also provided on units that have 150 and 300 square feet per resident even though these households are not counted in the cost estimates based on need. A detailed explanation of housing need with accompanying tables is provided in the Housing Need section of the report.

The costs associated with building new units are estimated regionally based on transportation costs reported by the Department of Labor and Workforce Development as well as permit values reported by the U.S. Census Bureau. A detailed explanation of regional construction costs is provided in the construction costs section of this report.

The high cost of construction and the lack of skilled trades-people act as barriers to developing adequate housing for populations in rural areas. Targeted money is needed not only to purchase construction materials but also to provide the training necessary so that rural residents can obtain the good paying jobs associated with building.

The populations most in need of housing are Alaska Native households, rural households and low-income households. Our findings indicate that rural Alaskans are more likely to both live in substandard and/or overcrowded housing and have low incomes. Rapid population growth in urban areas, Anchorage and Mat-Su especially, has driven the cost of housing to a level that is unaffordable to many low-income people.

The majority of new housing units being developed throughout the state are single-family units with a cost to construct that is beyond the reach of low and moderate-income households. The median cost of construction for a single-family home in the Municipality of Anchorage is more than \$200,000. Based on the findings of the affordability report, a household in the Wade Hampton census area would have to pay 111 percent of annual median income in order to rent a two-bedroom housing unit at regional rental rates. Both the Yukon-Koyukuk Census Area and the Bethel Census Area would have to pay more than 90 percent of median annual income to rent at the going rate.

The private sector and housing market do not function in a traditional way in rural Alaska. The cost to construct homes is high and the incomes of the rural population are low. If a private developer were to build a home in rural Alaska they would find it difficult to impossible to identify a buyer in many parts of the state. Additionally, there is a shortage of skilled builders in rural areas so finding the people power to undertake projects is also challenging. For these reasons, it is unlikely that the solution to the housing problem in rural Alaska lies in private investment.

Progress has been made. Since the passage of the Native American Housing and Self Determination Act (NAHASDA), federal funding for housing for Alaska Native people has been de-centralized allowing for more rapid response to need and a more focused regional approach to eliminating housing problems. Regional Housing Authorities and Tribally Designated Housing Entities continue to build new homes in rural and urban Alaska and to assist in the maintenance of older ones.

State and federal agencies participate in housing development as well. The Alaska Housing Finance Corporation provides millions of dollars in housing resources for low-income and special needs housing as well as incentive programs to private developers and home ownership loans to low-income people.

Despite the efforts of these organizations and others, there is still a need for affordable housing throughout the state, a need felt most acutely in parts of rural Alaska.



ALEUTIAN
HOUSING AUTHORITY

March 4, 2008

VIA EMAIL

The Honorable Lyman Hoffman
Co-Chair, Senate Finance Committee
State Capitol, Rm 518
Juneau, AK 99801-1182

Dear Senator Hoffman:

I am writing on behalf of the Aleutian Housing Authority (AHA), and as Chair of the Legislative Committee of the Association of Alaska Housing Authorities (AAHA), to offer our strong support for SB 389, which would provide additional funding for energy conservation and weatherization issues.

I hope you have received and have been able to review one of our packets covering AAHA's 2008 State Legislative Priorities. One of the top issues for both my own regional housing authority and for our statewide association is the current energy crisis we are facing, particularly in rural Alaska. Energy conservation measures, including weatherization, are probably the most cost effective, immediate actions we can take to address the situation in the short term and we applaud efforts by the legislature to move in this direction.

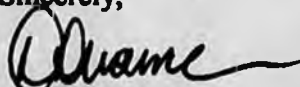
Given the impacts of rising energy costs on the communities served by my organization and those of my colleagues, I find it difficult to understand how members of the legislature can continue to pour significant amounts of potentially surplus funding into additional "rainy day" savings accounts. For us, the "raining day" is upon us, and some level of relief is warranted. SB 389 can provide a critically needed investment in rural infrastructure that will provide both short and long term returns to both individuals and the state generally.

Finally, as you deliberate on SB 389, I would like to respectfully suggest that strong consideration should be given to directing a significant amount of any funding provided under this measure to the regional housing authorities. Most, if not all of us are in the best position within our respective regions to efficiently and effectively administer such funds and activities that may be generated.

VIA EMAIL
The Honorable Lyman Hoffman
Co-Chair, Senate Finance Committee
State Capitol, Rm. 518
Juneau, AK 99801-1182
Page 2 of 2

Thank you for your efforts and consideration of our views on this issue.

Sincerely,



Dan Duame
Executive Director

Cc: Sen. Stedman, Finance Committee Co-Chair
Sen. Huggins, Finance Committee Vice-Chair
Senate Finance Committee Members
AAHA Members



March 5, 2008

The Honorable Johnny Ellis, Chair
Senate Labor and Commerce Committee
Alaska State Capitol, Room 9
Juneau, AK 99801-1182

RE: SB 289 (Hoffman)--Support

Dear Chair Ellis:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the Senate Labor and Commerce Committee to support SB 289, authored by your Committee colleague Senator Lyman Hoffman and co-sponsored by Senators Stevens, Kookesh, Elton and you.

AARP, as one of our national policies, encourages development of affordable, cost-effective energy efficiency programs and to provide an accompanying consumer education component. We listened carefully to the testimony from AHFC at your hearing yesterday and enthusiastically lend our support to the bill.

AHFC is obviously a tested organization that knows how to make things work in Alaska. If anyone can market this program and save energy costs for Alaskans, we believe they can.

Every year Alaska and every other state and the US Congress spend limited government money on energy assistance. This usually consists of helping people with their energy bills. SB 289 offers a sensible alternative and a method to reduce those bills. Rather than giving someone money to pay increasingly burdensome utility bills, SB 289 will plug the holes and provide the means for more efficient use of energy. With our high utility costs here, we know that it has a significant effect on older persons who spend 90% of their time in their homes. They are not (nor should they) turning down their thermostats when they leave for work.

From October to December, 2007, we surveyed our members in Alaska. The results on our questions on energy costs reinforce our interest in supporting SB 289.

Following up on Senator Bunde's question about income levels and ability to pay for energy costs, we were particularly interested in the income breakdowns.

Obviously, the lower your income, the more trouble you have with energy costs. Older people tend to live in older homes. Older homes were simply not as equipped for energy efficiency and, due to age, often have problems simply due to settling and earthquake minor impacts.

ACTION TAKEN	<20k	20k-50k	50k-75k	75k+
Lowered home heat substantially	58%	47%	38%	31%
Cut down on use of appliances	49%	32%	23%	22%
Cut back on necessities (defined as food and medicine)	46%	28%	18%	8%
Closed off part of home	30%	17%	10%	13%
Turned off heat in home	16%	10%	5%	7%
Used kitchen range as heater	12%	8%	3%	1%
Stopped using appliances	10%	7%	3%	2%

This survey was conducted of AARP members. Our members tend to have higher educational levels and higher incomes than the overall Alaska population over age 50. It is logical to expect that the general population over age 50 are having even more problems with utility bills and energy inefficiency.

We believe SB 289 will not only reduce energy expenditures but will reduce energy-related behaviors that pose a risk to the health and safety of our fellow citizens.

We encourage an "AYE" vote on SB 289.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Senator Gary Stevens
Senator Bettye Davis
Senator Lyman Hoffman
Senator Con Bunde



Association of Village Council Presidents

Regional Housing Authority

P.O. Box 767 - Bethel, AK 99559

907-543-3121

1-800-478-4687

907-543-2270 (FAX)

www.avcphousing.org

March 3, 2008

The Senate Labor & Commerce Committee:

Sen. Lyman Hoffman
Alaska State Capitol
Room #518
Juneau, AK 99801

Re: SB 289: Home Energy Conservation and Weatherization - An Act relating to home energy conservation and weatherization for purposes of certain programs of the Alaska Housing and Finance Corporation.

Dear Honorable Senator Hoffman,

The Association of the Village Councils Presidents Regional Housing (AVCP RHA) is a state-chartered regional housing authority that was organized in 1974 to oversee housing needs in Southwest Alaska's Yukon-Kuskokwim Delta region.

During its existence, AVCPRHA has constructed over 1,500 homes in 49 villages across rural Alaska, and renovated thousands more. One of our concerns in building and renovating these homes is the issue of providing the best heating systems for them and ways to reduce heating costs. Therefore, we believe we have some understanding of the heating needs and issues of rural Alaska.

The 2005 Alaska Housing Assessment developed by the Alaska Housing Finance Corporation identifies households by the types of heating fuel for each Native corporation region (*Information Insights, 2005*). For instance, 92.3% of households within the for-profit Calista Corporation area heated with oil or diesel, 35.9%, wood, and 9.4%, electricity.

According to the study, more than 17,000 new housing units are currently needed to meet population growth, relieve overcrowding, and replace substandard housing. This information tells us that in order to partly relieve the current economic hardship of heating fuel costs in bush Alaska, one of the solutions is to renovate homes in order for them to become more energy efficient and consume less petroleum products, therefore resulting in lower heating costs.

The 2005 study suggested that \$520 million is needed to completely upgrade all existing substandard homes in the bush. Therefore, we support SB '89 as a very good start

in beginning to work at resolving the current energy crisis as we believe it will lower heating needs and costs for Alaska's rural residents.

With oil prices hovering around the \$100/barrel mark, we do not see the current energy crisis in bush Alaska easing soon or in the near future. Therefore, AVCP RHA urges passage of SB 289, but we also request that AVCP RHA *be* the recipient of those dollars bound for the Y-K Delta for efficiency of SB 289 services, since we are in equal footing with the Alaska Housing Finance Corporation.

Thank you very much for your concerns for rural Alaskans and seeing to our request.

Sincerely,

**Ron Hoffman
President/CEO
AVCP Regional Housing Authority**

Enclosure: 2005 Alaska Housing Assessment

STATE OF ALASKA

DEPT. OF HEALTH & SOCIAL SERVICES

Alaska Commission on Aging

SARAH PALIN, GOVERNOR

P.O. BOX 110693
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March 10, 2008

The Honorable Johnny Ellis, Chair
 Senate Labor and Commerce Committee
 Alaska State Capitol, Room 9
 Juneau, AK 99801-1182

Subject: Support Letter for SB 289, Home Energy Conservation

The Alaska Commission on Aging (ACoA) encourages support of SB 289, a bill to enhance home energy conservation, which is authored by Senator Lyman Hoffman and co-sponsored by Senators Stevens, Kookesh, Elton, and you.

ACoA supports investment in an affordable, cost-effective energy conservation program that seeks to improve energy efficiencies and weatherization for Alaskans of modest means that will help individuals save money now and into the future. The Commission supports the legislation's intent to provide this assistance in the forms of forgivable loans and low-interest loans to individuals who qualify. SB 289 offers a sensible and alternative method for assisting people with their energy bills. Moreover, ACoA believes that this program will be of great assistance to individuals who live in rural Alaska who are spending much of their incomes for heating. As the state's lead housing organization with a proven track record managing affordable housing development and home energy conservation programs, Alaska Housing Finance Corporation is the appropriate agency to administer this program.

We believe that SB 289 will help older Alaskans, many of whom live in older homes that are energy inefficient and pose a risk to the health and safety of their inhabitants, are in desperate need for energy improvements. This home energy conservation program will help Alaska seniors to take measures to stop heat loss and improve the safety of their homes by replacing energy inefficient windows and doors, installing more insulation around in attics and crawl spaces, purchasing new energy efficient and safe furnaces, among other improvements. In consideration of the state's high utility costs, Alaska seniors, the majority of whom spend most of their day at home and cannot turn down their thermostats to save money, are spending increasingly more of their fixed incomes on heating their homes.

ACoA supports SB 289 and believes that this program in addition to the Low Income Home Energy Assistance Program that provides direct energy aid to those most in need are wise public investments. Please feel free to contact Denise Daniello, ACoA's executive director (465-4879), should you have any questions regarding our position.

Thank you for your consideration.

Sincerely,


 Banarsi Lal
 Chair Alaska Commission on Aging

Sincerely,


 Denise Daniello
 ACoA Executive Director

CC: Senator Lyman Hoffman
 Senator Gary Stevens

Senator Bettye Davis
 Senator Con Bunde

DD



**Association of Village Council Presidents
Regional Housing Authority**

P.O. Box 767 – Bethel, AK 99559

907-543-3121

1-800-478-4687

907-543-2270 (FAX)

www.avcphousing.org

March 3, 2008

The Senate Labor & Commerce Committee:

Sen. Johnny Ellis, Chair
Alaska State Capitol
Room #9
Juneau, AK 99801

Re: SB 289: Home Energy Conservation and Weatherization - An Act relating to home energy conservation and weatherization for purposes of certain programs of the Alaska Housing and Finance Corporation.

Dear Honorable Senator Ellis,

The Association of the Village Councils Presidents Regional Housing (AVCP RHA) is a state-chartered regional housing authority that was organized in 1974 to oversee housing needs in Southwest Alaska's Yukon-Kuskokwim Delta region.

During its existence, AVCPRHA has constructed over 1,500 homes in 49 villages across rural Alaska, and renovated thousands more. One of our concerns in building and renovating these homes is the issue of providing the best heating systems for them and ways to reduce heating costs. Therefore, we believe we have some understanding of the heating needs and issues of rural Alaska.

The 2005 Alaska Housing Assessment developed by the Alaska Housing Finance Corporation identifies households by the types of heating fuel for each Native corporation region (*Information Insights, 2005*). For instance, 92.3% of households within the for-profit Calista Corporation area heated with oil or diesel, 35.9%, wood, and 9.4%, electricity.

According to the study, more than 17,000 new housing units are currently needed to meet population growth, relieve overcrowding, and replace substandard housing. This information tells us that in order to partly relieve the current economic hardship of heating fuel costs in bush Alaska, one of the solutions is to renovate homes in order for them to become more energy efficient and consume less petroleum products, therefore resulting in lower heating costs.

The 2005 study suggested that \$520 million is needed to completely upgrade all existing substandard homes in the bush. Therefore, we support SB 289 as a very good start in beginning to work at resolving the current energy crisis as we believe it will lower heating needs and costs for Alaska's rural residents.

With oil prices hovering around the \$100/barrel mark, we do not see the current energy crisis in bush Alaska easing soon or in the near future. Therefore, AVCP RHA urges passage of SB 289, but we also request that AVCP RHA *be* the recipient of those dollars bound for the Y-K Delta for efficiency of SB 289 services, since we are in equal footing with the Alaska Housing Finance Corporation.

Thank you very much for your concerns for rural Alaskans and seeing to our request.

Sincerely,



**Ron Hoffman
President/CEO
AVCP Regional Housing Authority**

Enclosure: 2005 Alaska Housing Assessment

SB

293

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 2/19/08

FURTHER: Judiciary

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/14/08

Labor and Commerce Committee considered SENATE BILL NO. 293

SB 293 ELECTRONIC COMMUNICATION DEVICES

"An Act relating to electronic communication devices and to personal information."

and recommends:

- be replaced with SCS or CS SB 293 (LTC)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input type="checkbox"/>	Same Title
<input checked="" type="checkbox"/>	New Title
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Impact	Zero	Other
LAW	3/3/08			✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Impact	Zero	Other

APPROPRIATION - no fiscal note

SENATORS AND REPRESENTATION	SENATORS	REPRESENTATION	APPROVED	DATE	INITIALS
<i>[Signature]</i>	Bunde				✓
Betty Davis	DAVIS	x			
<i>[Signature]</i>	STEWART				x
CHAIR: <i>[Signature]</i>	ELLIS	x			

25-LS1509C

Bannister

3/12/08

CS FOR SENATE BILL NO. 293()**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-FIFTH LEGISLATURE - SECOND SESSION****BY****Offered:****Referred:****Sponsor(s): SENATOR MCGUIRE****A BILL****FOR AN ACT ENTITLED**

1 **"An Act relating to electronic communication devices and to personal information and**
2 **making certain violations related to electronic communication devices unfair trade**
3 **practices."**

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

5 *** Section 1. AS 45 is amended by adding a new chapter to read:**

6 **Chapter 48. Electronic Communication Devices.**

7 **Sec. 45.48.010. Label and information required. (a) A provider of an**
8 **electronic communication device shall label the electronic communication device, an**
9 **item it is part of, or the packaging of the device or item clearly and conspicuously with**
10 **an industry recognized symbol for radio frequency identification technology, and**

11 **(1) distribute information to the consumer that explains the meaning of**
12 **the industry recognized symbol; or**

13 **(2) post a sign on the premises where the electronic communication**
14 **device is sold or issued that**

1 (A) indicates that the provider is selling or issuing an electronic
2 communication device;

3 (B) explains the industry recognized symbol;

4 (C) explains how an electronic communication device may
5 send, gather, or transmit information about the consumer that can be read by an
6 unauthorized third party; and

7 (D) states whether it is technically feasible to deactivate the
8 electronic communication device, and, if technically feasible to deactivate the
9 electronic communication device, provide instructions on

10 (i) the specific location of the electronic communication
11 device in an item, if it is part of another item; and

12 (ii) how the consumer may deactivate the electronic
13 communication device.

14 (b) In this section,

15 (1) "industry recognized symbol" means a graphical system designed
16 to provide a standard way to show the presence, frequency, and data structure of a
17 radio frequency identification transponder;

18 (2) "transponder" means a wireless communications, monitoring, or
19 control device that picks up and automatically responds to an incoming signal.

20 **Sec. 45.48.020. Consent required.** A provider shall, before the sale or
21 issuance of an electronic communication device, in addition to complying with the
22 requirements of AS 45.48.010, notify the consumer that the electronic communication
23 device transmits personal information about the consumer and obtain the consent of
24 the consumer under AS 45.48.070 for the collection, maintenance, and disclosure of
25 information gathered by the electronic communication device about the consumer.

26 **Sec. 45.48.030. Deactivation.** (a) A provider may not activate a deactivated
27 electronic communication device without obtaining the consent under AS 45.48.020 of
28 the consumer who purchased the electronic communication device.

29 (b) A provider may not activate an electronic communication device that has
30 been deactivated unless the provider deletes any personal information stored in the
31 device before it was deactivated.

1 **Sec. 45.48.040. Requirement prohibited.** A provider may not require a
2 consumer to keep an electronic communication device activated in order for the
3 consumer to exchange, return, repair, or service an item that the electronic
4 communication device is a part of.

5 **Sec. 45.48.050. Required security measures.** (a) At the point of sale or
6 issuance, a provider shall use industry-accepted best standards to ensure that personal
7 information collected by using the electronic communication device is secure from
8 unauthorized access, loss, and tampering.

9 (b) A provider who retains personal information gathered through an
10 electronic communication device shall implement adequate security measures to
11 ensure that personal information collected by using the electronic communication
12 device is secure from unauthorized access, loss, and tampering. The security measures
13 must be consistent with the amount and sensitivity of the personal information being
14 stored on the system.

15 **Sec. 45.48.060. Scanning and reading.** (a) A person may not scan, read,
16 attempt to scan, or attempt to read an electronic communication device to obtain
17 personal information on a consumer without obtaining the consumer's consent under
18 AS 45.48.070.

19 (b) This section does not prohibit scanning or reading an electronic
20 communication device or using information gathered through an electronic
21 communication device to

22 (1) comply with federal or state law;

23 (2) comply with a properly authorized civil, criminal, administrative,
24 or regulatory investigation, subpoena, or summons by an agency of the federal
25 government, state government, or a municipality; or

26 (3) respond to a judicial process or, for examination, compliance, or
27 other purposes authorized by law, to a government regulatory authority having
28 jurisdiction over the person.

29 **Sec. 45.48.070. Forms of consent.** (a) The consent required by AS 45.48.020,
30 45.48.050, and 45.48.060 may be made by

31 (1) an electronic or written record; the record must, at a minimum,

1 clearly and conspicuously state the provider's privacy policy and the manner in which
2 information relating to the consumer will be collected and disseminated; or

3 (2) a deliberate act that indicates that the consumer volunteers to be
4 identified with the use of personal information gathered by, or contained within, an
5 electronic communication device; in this paragraph, "deliberate act" includes a
6 consumer voluntarily submitting the consumer's electronic communication device for
7 scanning or reading for the purpose of completing a wholesale or retail transaction.

8 (b) Consent under (a)(2) of this section that is obtained in one specific
9 situation may not apply to another specific situation unless the provider obtains in a
10 written contract the consumer's permission to apply the consent to more than one
11 specific situation.

12 **Sec. 45.48.080. Exemption.** This chapter does not apply to a travel document,
13 including a passport and a passport card, that contains an electronic communication
14 device and is issued by this nation or a foreign nation.

15 **Sec. 45.48.095. Definitions.** In this chapter,

16 (1) "activate" means to make activated;

17 (2) "activated" means not disabled, not deactivated, or not removed
18 from another item;

19 (3) "clearly and conspicuously" means reasonably understandable and
20 designed to call attention to the nature and significance of the information being
21 conveyed;

22 (4) "consumer" means an individual who buys or is issued an
23 electronic communication device for use in this state;

24 (5) "data" means signs, signals, writing, images, sounds, and other
25 information;

26 (6) "deactivate" means to disable, deactivate, or remove from an item;

27 (7) "electronic communication device" means an electronic device,
28 whether sold or issued by itself or as part of another item, that transmits, receives, or
29 stores personal information and that uses radio frequency identification technology in

30 (A) the 902 - 928 MHz frequency range or the 2.4 GHz
31 frequency authorized by the Federal Communications Commission; or

1 (B) another frequency range authorized by the Federal
2 Communications Commission for radio frequency identification technology;

3 (8) "person" has the meaning given in AS 01.10.060, but expressly
4 includes an agency of this state, a municipality of this state, or an agency of a
5 municipality of this state; "person" does not include an agency in the judicial branch
6 of the government of this state;

7 (9) "personal information" means one of the following data elements
8 about a consumer whether used alone or with other information to identify the
9 consumer:

10 (A) first or last name;

11 (B) social security number;

12 (C) driver's license number or state identification card;

13 (D) bank account number or other financial institution account
14 number;

15 (E) credit card number or debit card number;

16 (F) automated or electronic signature;

17 (G) unique biometric data;

18 (H) an unlisted telephone number;

19 (I) medical information;

20 (J) address;

21 (K) date of birth;

22 (L) ethnicity or nationality;

23 (M) religion;

24 (N) political affiliation;

25 (O) sexual orientation;

26 (P) a private group affiliation not available in the public
27 domain;

28 (10) "provider" means a person who sells, offers to sell, or issues an
29 electronic communication device; in this paragraph, "sell" does not mean resale by a
30 consumer;

31 (11) "radio frequency identification" means a tagging and tracking

- 1 technology that uses electronic devices to transmit information to a reader.
- 2 * **Sec. 2. AS 45.50.471(b) is amended by adding a new paragraph to read:**
- 3 **(53) violating AS 45.48 (electronic communication devices).**

ALASKA STATE LEGISLATURE

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Juneau, Alaska 99801-1182
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Fax (907) 165-6592

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Chair
Senate State Affairs
Administrative Regulation Review

Member
Senate Judiciary Committee
Senate Resources Committee

SENATOR LESIL MCGUIRE

SPONSOR STATEMENT

SB 293 – Electronic Communication Devices

Radio Frequency Identification (RFID) is a tagging and tracking technology that uses tiny electronic devices equipped with antennae that can transmit identifying information to a remote reader. This innovative technology has numerous applications, many of which are of benefit to government, businesses, and consumers – some that are not.

As with many new technologies that involve access to private information, there is potential for misuse and abuse with RFID devices. SB 293 minimizes this potential by closely regulating the use of RFID devices in the State of Alaska.

SB 293 regulates the use of RFID devices in Alaska by:

- requiring labeling on all RFID devices
- requiring that business using RFID devices obtain consumer consent
- establishing security standards for storage and access of information gathered via RFID
- prohibiting scanning or remote reading of an RFID without consent
- outlining “form of consent” requirements
- establishing enforcement measures for the misuse of RFID devices

By establishing RFID regulations where none exist, SB 293 aims to safeguard consumer privacy and stay ahead of those who would misuse this emerging technology.

ALASKA STATE LEGISLATURE

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Administrative Regulation Review

Member
Senate Judiciary Committee
Senate Resources Committee

SENATOR LESIL MCGUIRE

SUMMARY OF CHANGES

SB 293 – Electronic Communication Devices

After hearing Senate Labor & Commerce Committee member comments and public testimony on SB 293 and following discussions with the bill drafter, the Attorney General's office, the Electronic Privacy Information Center, and Dr. Oliver Hedgepeth, Professor of Logistics at University of Alaska Anchorage, the sponsor decided to incorporate the following changes into a draft committee substitute for SB 293:

1. CS Page 1, Line 1

Change

After "information" insert "and making certain violations related to electronic communication devices unfair trade practices."

Explanation

Conforms with the addition of Section 2, which adds violation of this act to the list of Unfair Trade Practices already in statute.

2. CS Page 1, Line 7

Change

Delete "active."

Explanation

"Active" is an industry specific term used to differentiate between two types of devices:

- (1) an "active" RFID tag that has a small battery or other source of power and doesn't require power from the reader to send a signal
- (2) a "passive" RFID tags those that doesn't have its own power source and are powered by radio signals transmitted from the reader.

We removed "active" even though it was being used in the traditional sense (meaning "turned on" or "functioning") in order to avoid confusion with the industry specific term.

3. CS Page 1, Line 10; Page 2, Lines 13 and 15

Change

Replace "universally acceptable symbol" with "industry recognized symbol."

Explanation

There is no "universally accepted symbol" for RFID. Requiring one would mean that a global industry would have to agree upon a standard label solely for products distributed in the state of Alaska. Allowing for "industry recognized symbols" also accommodates those companies who have already willingly labeled RFID products.

4. CS Page 2, Lines 26-31

Change

Delete (a) and replace with (b)

Insert new (b)

Explanation

Original (a) required consumers to pay costs associated with the deactivation of an RFID. We decided this would place an unnecessary burden on the consumer.

New (b) adds that a provider must delete any personal information on a reactivated RFID. With such a wide variety of RFID devices on the market, it would seem that reuse would be possible if not likely. We did not want RFID devices being reactivated and sent back out into the market unless they were purged of all personal information.

5. CS Page 3, Line 1

Change

Replace "Coerce" and "coercion" with "require" and "requirement"

Explanation

Semantic change. Coercion is a stronger term and more open to interpretation, which could make proving a violation of this section more difficult.

6. CS Page 3, Lines 15-16

Change

Delete "remote"

Explanation

Deletion of superfluous language. All RFID devices scan and read remotely.

7. CS Page 4, Lines 12-14

Change

Delete section.

Create new section entitled Exemption.

Explanation

Enforcement measures are laid out in the Unfair Trade Practices. Making a violation of this act an Unfair Trade Practice removes the need for a separate enforcement clause.

New section creates an exemption for passports and national or international travel documents.

8. CS Page 4, Lines 16-18

Change

Delete definition of "active"

Insert definitions for "activate" and "activated."

Explanation

"Active" no longer appears in the bill for reasons explained in Change 2 above. "Activate" and "activated" are used instead.

9. CS Page 4, Lines 28-29

Change

After "item" insert "that transmits, receives, or stores personal information."

Explanation

Narrows the focus of the bill to only those devices which expose consumers to the threat of identity theft or other misuses of personal information.

10. CS Page 6, Lines 2-3

Change

Insert "Sec. 2."

Explanation

Amends AS 45.50.471 to add violations of this act to the list of Unfair Trade Practices. Opens it up to investigation by the AG's office as well as action by private parties and establishes civil penalties under the Unfair Trade Practices Act.

LEGAL SERVICES

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

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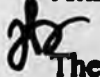
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 11, 2008

SUBJECT: SB 293 question relating to passports
(Work Order No. 25-LS1509\A)

TO: Senator Lesil McGuire
Attn: Trevor Fulton

FROM:  Theresa Bannister
Legislative Counsel

You have asked what effect SB 293 would have on the use of passports in Alaska, specifically whether federal rules regarding passport use would supersede any requirements of SB 293 and whether an exemption is needed for RFID-tagged passports.

The question is whether federal law preempts the imposition of the requirements of SB 293 on federal passports. The preemption doctrine is based on the Supremacy Clause in art. VI, cl. 2, of the U.S. Constitution. That clause states that the "Constitution and the laws of the United States . . . shall be the supreme law of the land, . . . anything in the constitutions or laws of any State to the contrary notwithstanding."

To determine whether Congress has preempted state action in a particular area, a court will first examine whether Congress overtly preempted the subject matter the state wishes to regulate, either explicitly, by declaring its intent to preempt all state authority, or implicitly, by occupying the entire field of regulation on the subject in question.¹

The authority to grant, issue, and verify passports is found at 22 U.S.C. 211a. That section gives sole authority for granting, issuing, and verifying U.S. passports to the secretary of state under the rules prescribed by the secretary of state.² Although I have not found an express statement regarding state law, 22 U.S.C. 211a does state that "no other person shall grant, issue, or verify such passports." This statute's language appears to indicate Congress's intent to preempt all other authority, including a state's, to regulate passports or to occupy the entire field of passport granting, issuance, and verification by limiting the issuance and rule-making authority to the secretary of state.

¹ See Tlingit-Haida Reg'l Elec. Auth. v. State, 15 P.3d 754, 766-67 (Alaska 2001).

² Executive Order 11295 delegates to the secretary of state the president's authority under 22 U.S.C. 221a to make the rules.

The issuance of passports includes the issuance of electronic passports³ and of passport cards that use vicinity-read radio frequency identification technology.⁴ The electronic passports use an electronically readable device, which is an electronic chip encoded, among other items, with the bearer's personal information.⁵ It is not readily apparent to me from my limited review of federal passport statutes and regulations whether the electronic passports use radio frequency identification technology, or whether the frequency of the electronic devices for electronic passports and the passport cards falls under the frequency requirements in the definition of "electronic communication device" under SB 293

Sections 45.48.010, 45.48.020, and 45.48.050 of the bill restrict the issuance of an electronic communication device in certain circumstances by requiring certain disclosures, obtaining consent, and using certain security measures. These sections would directly affect the issuance of electronic passports and passport cards in this state if those passport documents use an electronic communication device that falls within the definition of "electronic communication device" under SB 293. These sections add requirements for issuance that have not been established by the secretary of state and would have the effect of obstructing the issuance of the passports by requiring the passport issuer to satisfy these requirements of SB 293. Although, as a practical matter, the actual passport is usually not "issued" in this state, the receipt in this state could be argued to constitute "issuance" and "issuance" could be interpreted to cover passports. Therefore, assuming that the technology in each of these passport documents qualifies as an electronic communication device for SB 293, and to the extent that issuance is interpreted to cover the transmittal of passports to persons in this state, then these provisions of SB 293 appear to be preempted by 22 U.S.C. 221a, with regard to U.S. passports.

With regard to sec. 45.48.060's required consent for remote scanning and reading, while this section may apply in Alaska when a person leaves or enters the state from Canada, it will not cause a preemption problem because sec. 45.48.060(b)(1) states that the section does not prohibit scanning, etc., to comply with federal law.

Preemption would occur whether or not SB 293 establishes an exemption for U.S. passports. If preemption occurred as to passports, the general severability clause that applies to all Alaska statutes, AS 01.10.030, would apply to prevent the preemption from affecting SB 93's application to circumstances. So, it is not necessary for the bill to

³ See 22 CFR 51.1(b).

⁴ See 72 Fed. Reg. 74170 (December 31, 2007), and 22 CFR 51.3 (effective February 1, 2008).

⁵ See 22 CFR 51.1(b).

Senator Leil McGuire

March 11, 2008

Page 3

include an exemption for U.S. passports. However, including an exemption would make the matter clear in the bill, which is always a good approach.

If I may be of further assistance, please advise.

TLB:med

08-174.med

Response to questions brought up in the March 4th, 2008 Senate Labor & Commerce Committee hearing on SB 293: Electronic Communication Devices

Last week Senator Bunde asked if SB 293 was in essence a proactive bill or if it addressed any current problems with RFID use in the State of Alaska. My answer was that we were not aware of any current problems but that there have been numerous studies done in other states that show the vulnerabilities of this technology.

I would like to add two things to that response:

(1) Assistant Attorney General Ed Sniffen's statement that his office had not received "any direct complaints, at least not that I'm aware of, concerning this RFID technology, but it wouldn't surprise me if some identity theft victims in Alaska have had their identity stolen as a result of new technology that is able to remotely scan and get this information from consumer devices."

(2) The fact that RFID technology facilitates the tracking and profiling of consumers and of the public.

From the Stanford Technology Law Review:

"The use of RFID technology in identification documents threatens to drastically reduce privacy rights because of its potential to be used for anonymous and invisible tracking. Any information that is transmitted remotely from the RFID tag—whether that is name, social security number, or other random number—permits tracking of the movements and activities of an individual."

Also from the Stanford Technology Law Review:

"The use of RFID technology in identification documents also lays the groundwork for even more widespread profiling of individuals. Profiling functions to create a picture of a person's private affairs or to attempt to predict future activities by aggregating a person's movements or transactions over a period of time."

While some of this may seem a little Orwellian in nature and perhaps even a bit paranoid, the fact is that a lot of people, and I would venture to say Alaskans in particular, are very sensitive to this sort of intrusion into their personal lives.

So, from a personal privacy perspective, SB 293 does address current problems with RFID use in Alaska, namely tracking and profiling.

Senator Bunde also asked how SB 293 would affect the use of US Passports equipped with RFID technology. We have drafted a CS that would exempt US Passports and other international travel documents.

I would also like to respond to the question of whether there are similar laws regulating RFID technology in other states. RFID technology—while not a new technology—is a relatively new area of concern for the public. It wasn't until 2005 that parents from Sutter, CA objected to middle-school badges equipped with RFID devices and, with the ACLU's help, brought RFID to the nation's attention. Since then, there have been more than 50 bills introduced in 27 states addressing RFID. While none of this legislation has made it into the law books, much of it is still pending. With such a robust response from lawmakers, it would seem that it is just a matter of time before state and federal laws catch up with this rapidly growing technology.

Please contact Trevor Fulton in Sen. McGuire's office with any further questions or clarifications.

The Seattle Times

Monday, February 19, 2007 - Page updated at 12:00 AM

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Does RFID technology pose risk?

By Elliott Wilson
Seattle Times staff reporter

OLYMPIA — Tiny radio transmitters in credit cards, on clothing tags and even inside animals expedite sales, guide products through the supply chain and help lost pets get home.

But privacy advocates worry the same technology could be used to spy on consumers.

To pre-empt such high-tech surveillance, state Rep. Jeff Morris, D-Mount Vernon, wants to make sure no one can use such technology to track people through the merchandise they buy, or to tap into their personal information.

His proposal, House Bill 1031, includes some of the nation's tightest restrictions on the technology known as radio frequency identification, or RFID.

Morris has the support of privacy groups, but technology companies say his bill addresses a problem that doesn't need fixing. The companies say they already work hard to protect customers' privacy and that additional regulation would only hurt their industries.

RFID tags store data that can be transmitted wirelessly when they come close to a reader device.

The uses range from tiny stickers that help track crates in Wal-Mart storerooms to sophisticated chips that transmit an address or account information from a cellphone or other electronic gadget.

The distance the information is transmitted varies: Some tags need almost direct contact with an RFID reader, while others can send signals several feet or even farther.

Under Morris' bill, anyone distributing items equipped with RFID technology would have to label the products, notify consumers if the item can transmit personal data, and show how to deactivate the transmitter if possible.

Retailers and other distributors also would have to ensure that RFID transmissions are securely encrypted.

The bill had its second hearing Friday in the House Technology, Energy and Communications Committee, which Morris chairs.

Representatives from RFID producers, retailers and the cellphone industry said the regulations would hamper their businesses and stifle new technology.

If the legislation passes, companies working on new uses for RFID may abandon their efforts, said Allison Fleming, a manager with the RFID company EPCglobal.

T-Mobile lobbyist Russell Sarazen said, "It would have devastating effects to T-Mobile and the rest of the wireless industry." He and other phone-industry representatives argue for an exemption for cellphones.

Wireless companies are developing RFID-equipped phones that allow users to order products simply by holding a handset close to a poster or advertising billboard, according to RFID Journal, a trade publication.

Sarazen also said the regulations are pointless for his industry because the whole purpose of the products is to send electronic messages.

Liz McIntyre, co-author of the book "Spychips: How Major Corporations and Government Plan to Track Your Every Purchase and Watch Your Every Move," said the RFID chips are everywhere and are small enough to slip between layers of paint, hide in tennis shoes, or secretly stick on computers.

"I could walk by things tagged with RFID and never even know," she said.

McIntyre foresees consumers unwittingly wearing RFID-tagged garments that could be tracked by strategically placed RFID readers.

That would give companies a complete history of each product, from store room to landfill, and give them a detailed look into consumer habits.

"It's likely when you buy a pair of shoes, it's going to be a proxy for you," McIntyre said.

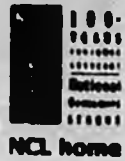
Elliott Wilson: 360-236-8169

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our mission
about NCL



NCL's Mission Statement

Our mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. The National Consumers League is a private, nonprofit advocacy group representing consumers on marketplace and workplace issues. We are the nation's oldest consumer organization.

NCL provides government, businesses, and other organizations with the consumer's perspective on concerns including child labor, privacy, food safety, and medication information.

other info from NCL:

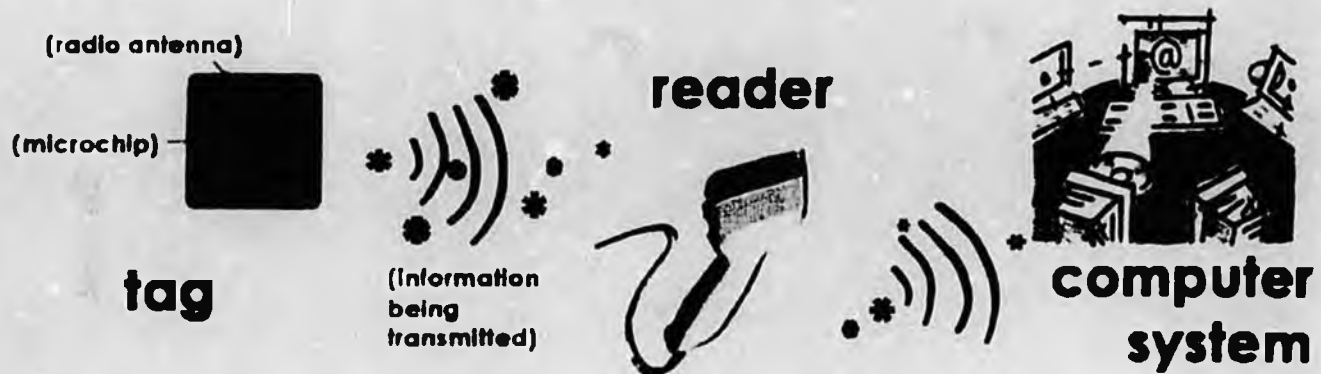
- [health](#)
- [fraud](#)
- [finances](#)
- [labor](#)
- [food](#)
- [technology](#)
- [utilities](#)
- [privacy](#)
- [general interests](#)

[Fraud.org](#) • [LifeSmarts](#) • [StopChildLabor.org](#) • [SOSRx](#) • [Fields Of Hope](#) • [Phishinginfo.org](#)

Frequently asked questions about RFID

Understanding RFID

RFID - radio frequency identification - has been around for over 60 years. Today, consumers come into contact with this technology in many forms, from the passes that employees use to gain access to the buildings where they work to payment cards that don't have to be swiped through a machine. As RFID is increasingly used in people's daily lives, it's important to what it is and how it works.



What is RFID and how does it work?

RFID is a wireless technology that is used to identify things. It typically involves three components: a tag, a reader, and a computer system.

Sometimes referred to as a transponder, the tag consists of a microchip and a radio antenna. The chip in the tag contains information about the item that it is either attached to or that it is embedded in. The tag transmits that information to the reader using radio signals.

The reader, also called an interrogator, is a device that is designed to pick up those radio signals and deliver the information they contain to the computer system.

The computer system can use the information in a variety of ways, depending on what it is set up to do - for example, it might be to track inventory or give a person access to an office building. It may be connected to databases that contain more information linked to the item and, in some cases, to the person using it.

How big are the tags?

The tags vary in size depending on the size of the chip they contain. Some tags are smaller than a grain of rice and can be embedded in products or labels, even planted

under the skin. Others are as big as a deck of playing cards and are attached to pallets and cases. Tags also vary in how much information their chips can store or process, with inexpensive "dumb" tags having little memory or processing capacity and more costly "smart" tags having far greater computing power.

How is RFID used in the real world?

Many consumers are already familiar with one form of RFID - the toll-pass that drivers can keep inside their cars to go through toll booths without having to stop to pay. The chip in the toll-pass sends information to a reader located in the toll booth. This information, the reader's location, and the time and date of the reading are then transmitted to a computer system, which may be linked to databases containing other information such as the toll fee and the bank account that will be billed for the toll.

Another use of RFID that some consumers are familiar with are payment systems that allow them to wave a tag in front of a reader on a gas pump to fill up a gas tank. RFID technology is also being used to control entry into certain buildings. Some pet owners are having their dogs or cats implanted to help track them in case they get lost, and the U.S. Food and Drug Administration has approved a tag to be implanted in humans containing their patient records for use in hospitals. RFID is being used in supply chains to track the movement of products from a manufacturer to a distributor to a retailer and any points in between. Depending on their intended use, RFID systems vary in capability, the complexity and cost of the tag, the amount and sensitivity of the information that the chips contain, and the distance from which readers can pick up the signals from the tags.

How close to the tag does the reader need to be?

That depends on the type of RFID tag. Some tags are called passive because they don't have their own power source. The reader powers up the tag by sending it a radio signal, and the tag responds by sending radio signals back with the information the chip contains. An active tag has its own small battery or other source of power and doesn't require power from the reader to send a signal to it. Passive tags can be read only from a relatively short distance, from a few inches to a few yards. Active tags can generally be read from a longer distance.

The radio signals used to communicate between tags and readers can pass through objects - they don't require a direct line of sight between them as barcodes do with bar code readers. This means that if individual items in a grocery store were tagged, it is theoretically possible to go through the checkout simply by wheeling the shopping cart by a reader without having to unload it. As the technology advances, the ability to get consistently accurate reads is improving.

What information can be stored on the chips in the tags?

The chips in the tags may have all sorts of information on them, depending on the purpose for which the tags are used. For example, those that control access to buildings may contain the employee's name, job title, and information about which parts of the building the person can go. Some tags have only a unique ID code for the item they are identifying (see Understanding the EPC). The information on the chips may be linked to databases that contain more information, including about individuals. As technology advances, the chips in the tags will be able to store and process an increasing amount of information.

What about security?

As with any technology, criminals might try to exploit RFID, so security is important. For consumers, the main security concern is about RFID uses in which their personal information, such as health records or bank account numbers, is stored on the chips in the tags or in databases that are linked to them. There are various types of security measures that can be used to protect information as it is transmitted and stored, such as encrypting it - turning it into a code that only authorized users can translate. Devices such as key fobs and wireless phones that are equipped with RFID in order to use them to pay for purchases present another security concern - what happens if they are lost or stolen? One way to prevent unauthorized use would be to have the ability to "lock" these devices so their functions can be turned off if they fall into the wrong hands.

How can RFID benefit consumers?

Convenience is one of the biggest benefits of RFID. In addition to the tags that allow drivers to pass through toll booths quickly, consumers can also use cell phones, key fobs, and credit cards that are equipped with RFID to pay for purchases simply by waving them in front of readers. RFID tags on items can make it easier for consumers to make product returns without receipts. Similar to the way that pets can be implanted with tags to make it easier to identify them if they are lost, Alzheimer's patients may wear tagged wrist bands in case they wander away from their caregivers. Patients in some hospitals wear them to ensure that they get the right medications, and expensive hospital equipment is being tagged so it can be located quickly and be more efficiently used.

Understanding EPC

What does "EPC" mean?

EPC stands for Electronic Product Code. It is also sometimes called "the next generation barcode." It's a unique identification code that is stored in the chip on a tag as a product goes through the supply chain. Unlike the bar codes that are commonly used on items to distinguish a can of soup from a box of crackers, the EPC can identify a specific can of soup or box of crackers by its unique ID number.



Do all RFID systems use the EPC?

No, the EPC is a unique numbering system enabled by RFID and is mainly used on shipping cartons and pallets to track products from the manufacturer to the warehouse to delivery at the retail location. If individual items have tags with the EPC, the tags are usually on the packaging - on the box that contains the television a consumer buys, for instance, not on the television itself.

How can the EPC benefit consumers?

Convenience is also one of the biggest benefits of the EPC. It can also help merchants keep popular products from running out by tracking inventory and ordering re-supplies more quickly. Some shopping carts are being equipped with readers that will communicate with tags embedded on store shelves. When the consumer walks by, a small screen on the cart will display promotions, recipes, and other information connected with those products.

Safety is another benefit. For example, tagging prescription drug bottles with the EPC at the manufacturer can help pharmacies assure that the drugs they are providing to consumers are real, not counterfeit and that the prescription drugs being dispensed are those that the doctor prescribed. Stores can use RFID to locate and remove perishable items that are past their prime or recalled items from their shelves. RFID can also help protect the public health by enabling companies to track the source of an item - like a bag of spinach or beef from a cow, in case of disease.

What about my privacy?

Though few individual items are presently being tagged, the use of tags is growing. As RFID use becomes more widespread, it is important to know what information, if any, will be collected, how it will be used, if it will be stored and for how long, and whether it will be shared and with whom, especially if it is or can be linked to personal information about individuals.

Tags with chips programmed with the EPC to track items through the supply chain don't contain information about individuals. But as with barcodes today, it's possible that information about individuals could be linked to purchasing those items. For example when consumers use store loyalty cards to get sale prices, the retailer can keep track of the types of products they buy by linking the information from the barcodes on those items to the personal information those individuals may have provided when they signed up for the cards. With that information, retailers can track the spending habits of customers in a certain zip code, or send them advertisements for certain kinds of products.

In other uses of RFID technology, information about individuals may be stored on the chips in the tags. Again, the information on the chips may also be linked with information about individuals stored in databases connected to the system. Take the

toll-pass system - it's designed to collect information about where the tag was, and when, and links that data with information in a database about whose account to bill. This information could potentially be used in ways that may raise privacy concerns. For instance, an employer who installs a toll pass in a company car and monitors the charges made against the account could track where and when an employee has driven the car on toll roads.

How do I know if RFID is being used?

Because the tags can be so small, their use may not be readily visible. Sometimes they are embedded in items - for instance, tags are being built into new tires to monitor the tire pressure for safety purposes.

Items with tags that have chips containing the EPC are marked with a symbol that contains those letters, which indicates that the manufacturer participates in a voluntary program that requires it to disclose the use of RFID technology and follow certain practices to protect consumer privacy. The symbol will usually appear on the back of the package.

In other uses of RFID, there may be disclosures on signs in the store, on product labels, or in contracts and user agreements, or there may be no notice at all. There is no U.S. federal requirement to label RFID tagged items or to disclose that RFID is being used. Some states are considering laws concerning RFID, which may include requirements to disclose its use.

If RFID is being used, can I remove it or deactivate the tag if I choose?

That depends on how the tag is attached and how it is intended to be used. If it's embedded in an item, like a tire, it may not be possible to remove or deactivate it, or to do so without destroying the product. In other cases, removing it may be pointless. For example, if someone were to remove the RFID technology from the keyless remote for their car, it would become useless. If a tag can be easily removed or turned off, consumers may have that option.

In the case of tags with chips that contain the EPC, they are usually on the packaging and will be discarded with when the packages are thrown out. In some cases, a store clerk may remove a tag at the point of purchase, as is done now with the security tags on certain items, such as a DVD or clothing item.

If there is a choice about removing or disabling a tag, consider any benefits it provides and weigh them against any trade-offs you'd have to make. For example, if the tag is designed to make returning items easier, what is the return process without the tag? Are there other options? Is it possible to get the same or a similar item without the tag?

Also consider what privacy implications, if any, there may be in relation to the tag. Will any personal information be on the tag or linked to it? What type of information

is it and how will it be used? Is it possible to get the benefits without any personal information being linked to the tag? If the tag is used as part of a payment system or for another sensitive purpose, such as providing health records, is there adequate security to prevent it from being read or used without authorization? Look for explanations about privacy and security and ask questions to make informed decisions about using products with RFID.

Where can I get more information about RFID?

Information is available from these sources and consumers can search online for more resources about RFID.

Trans Atlantic Consumer Dialogue
Consumer and privacy issues related to using RFID
[http://www.tacd.org/cgi-bin/db.cgi?
page=list&config=admin/docs.cfg&col_docsecid=4](http://www.tacd.org/cgi-bin/db.cgi?page=list&config=admin/docs.cfg&col_docsecid=4)

Center for Democracy and Technology
Best practices for companies using RFID
<http://www.cdt.org/privacy/20060501rfid-best-practices.php>

EPCglobal
Guidelines for companies using the EPC
<http://www.epcglobalinc.org/>

EPCglobal US
Guidelines for U.S. companies using the EPC
<http://www.epcglobalus.org/>

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[RFID Home](#)

RFID

Radio Frequency Identification

Glossary of useful RFID terms

[RFID Home](#)

Active RFID tag: has its own small battery or other source of power and doesn't require power from the reader to send a signal to it.

Computer system: receives information about the item that is stored in the RFID tag.

Encrypting: turns information into a code that only authorized users can translate.

EPC: the Electronic Product Code. It's a unique identification code that is stored in the chip on an RFID tag as a product goes through the supply chain.

Interrogator: another word for a reader.

Passive RFID tags: don't have their own power source. The reader powers up the tag by sending it a radio signal, and the tag responds by sending radio signals back with the information about the item that the chip contains.

Reader: a device that is designed to pick up the radio signals from the RFID tag and deliver the information it contains to the computer system.

RFID: a wireless technology that is used to identify things.

RFID tag: consists of a microchip and a radio antenna. The chip in the tag contains information about the item that it is either attached to or embedded in. The tag transmits that information to the reader using radio signals.

Supply chains: the movement of products from a manufacturer to a distributor to a retailer and any points in between.

Transponder: another name for the RFID tag.

[Fraud.org](#) • [LifeSmarts](#) • [StopChildLabor.org](#) • [SOSRx](#) • [PhishingInfo.org](#)

testimony, comments & speeches
NCL advocacy



CDT Working Group on RFID
Privacy Best Practices for Deployment of RFID Technology
Interim Draft
May 1, 2006

Introduction

Creative applications of radio frequency identification ("RFID") technologies hold promise for consumers, businesses and government. They suggest possibilities for reducing costs through better inventory management, for improving the safety of the drug supply, for aiding in the care of the elderly and impaired, for reducing error rates in hospitals and for improved tracking of luggage and cargo at airports to improve security and passenger service, among other applications.

There are many possible applications of RFID that do not pose major privacy concerns. But to the extent that RFID devices can be linked to personally identifiable information ("PII"), including where such devices facilitate the tracking of an individual's location, RFID raises important privacy questions. While this document is primarily intended to address these privacy implications, particularly with respect to control of PII, its goal is also to increase transparency about the use of RFID technology involving consumers.

What is RFID?

RFID refers to a technology that uses radio waves to identify an object. An RFID system typically includes three elements: a tag, a reader, and a database.

An RFID tag or transponder comprises a chip that contains a unique number that identifies an object (and perhaps other information) and is connected to an antenna. Each antenna enables the chip to communicate via radio waves to a reader, which captures the unique number or other data on the tag. That data can then be transmitted to computers that store information about the object to which the tags are attached. In most instances, the protocol for communication between the reader and tag enables a fixed set of commands; tags typically do not have the capacity to upload and execute additional software programs.

RFID Tags

The simplest RFID tags are "passive" and as such do not carry their own power supply to enable data transmission. Passive tags receive their power from the electromagnetic waves emitted by readers that induce a current in the tags, thereby enabling the transmission of the information stored on the tags. Other tags are "active" and do contain some form of power supply allowing the broadcast of information from the reader. Active tags are often able to transmit over a much longer range than passive tags - typically 100 feet or more. In comparison, passive tags have ranges that are minimal, in the range of several yards or less. There are even RFID tags designed to have a communication range of a few inches or less.

Both active and passive tags may be "dumb," without any capability of processing data on

board or "smart," having significant storage capacity that can support possible data security measures such as encryption, or including sensors for measuring conditions such as pressure or heat.

Readers and Read Range

RFID readers interrogate RFID chips to receive the identification number and other data. Readers interact with chips using varying radio frequencies. Low frequency readers and tags are less expensive than ultra high frequency readers and tags, use less power and penetrate non-metallic substances better. On the other hand, ultra high frequency tags can be read at a greater range from readers and can transfer data faster than their lower frequency counterparts. Both high and low frequency RFID systems have certain advantages over the more traditional bar code systems in that they can read objects within their range without line of sight access and can also read multiple objects at the same time, unlike the individual object scanning required by the bar codes systems.

Read range refers to the maximum distance an RFID chip can be accessed by a reader. Read ranges can vary widely: while some systems may have a read range of 100 feet, others may have a read range of only one or two inches. The read range designed into a particular RFID system is selected to serve the requirements of a specific application. In some cases, the desired read range is long, as in the case of inventory control or inventory tracking. In other situations, only an extremely short read range is necessary, and may in fact be preferable for security reasons.

Data and RFID Systems Networks

Finally, data may be transmitted over a network from the readers to business process applications, and to databases where information about the identified objects is stored.

The security of these networks is critical to the security of the overall RFID system. Depending on the sensitivity of the data within an RFID system, the data may be encrypted and include other security measures.^[1]

The family of RFID technologies contains many sub-groupings with unique attributes and abilities that depend upon the various capabilities of the components of the technology, including the sophistication of the circuitry in the tags, the levels and sources of power involved, the communication protocols linking the tags and the readers, and the distance required between tags and readers for effective communication. Because different standards have developed for the varying uses of the tags, not every reader can read every tag.

Broadly speaking, RFID technology can be used for four general purposes: 1) to keep track of objects, 2) to keep track of people, 3) to provide services, or 4) as an internal component of a product or device.^[2] Technical differences in the technology are reflected in its different applications.^[3]

RFID and Privacy

RFID technology raises privacy concerns when its use enables parties to obtain personally identifiable information, including location information, about particular individuals that those parties otherwise would be unable or unauthorized to obtain. This information may be a person's location; it may be that the person has a certain product in his or her possession; it may be that the person has used a particular service. Security concerns arise if unauthorized parties are able to obtain such information either from interception of the radio

communications between tags and readers, through unauthorized reading of the tags, or via unauthorized access to the network or the database.

Detailed analysis of privacy and security issues in the context of these new technologies is clearly called for. Three general principles emerge from this analysis that can be applied to help address concerns about privacy in existing and new applications of RFID: the principle of technology neutrality; the principle of privacy and security as fundamental design requirements; and the principle of transparency.

Technology Neutrality: RFID technology in and of itself does not impose threats to privacy. Rather privacy breaches occur when RFID, like any technology, is deployed in a way that is not consistent with responsible information management practices that foster sound privacy protection.

Privacy and Security as Primary Design Requirements: Users of RFID technology should address the privacy and security issues as part of its initial design. Rather than retrofitting RFID systems to respond to privacy and security issues, it is much preferable that privacy and security should be designed in from the beginning.

Consumer Transparency: There should be no secret RFID tags or readers. Use of RFID technology should be as transparent as possible, and consumers should know about the implementation and use of any RFID technology (including tags, readers and storage of PII) as they engage in any transaction that utilizes an RFID system. At the same time, it is important to recognize that notice alone does not mitigate all concerns about privacy. Notice alone does not, for example, justify any inappropriate data collection or sharing, and/or the failure to deploy appropriate security measures. Notice must be supplemented by thoughtful, robust implementation of responsible information practices.

The Purpose of these Guidelines

Representatives from various consumer groups and commercial enterprises developed these guidelines under the leadership of the Center for Democracy and Technology ("CDT") in an effort to address current privacy concerns, as well as to limit future concerns regarding the deployment of RFID technology. This document is the result of an extensive analysis of current and near-term applications of RFID, the ways in which those applications do or do not implicate privacy, and the manner in which companies can address them. These guidelines have been designed at the principles level in consideration of the wide variety and versatility of current RFID systems, the breadth of applications, and the speed at which the technology is developing. This document is intended to provide guidance for policymakers, developers and users about privacy in the context of RFID technology.

To focus their discussions, the participants in this effort used the framework of fair information practices as articulated in the Organization for Economic Cooperation and Development's Guidelines on the Protection of Privacy and Trans-border Flows of Personal Data ("OECD Guidelines"). While this framework proved helpful to relate RFID technology to specific issues regarding electronic data flows, it became evident to the participants that many of the privacy issues related to RFID are common to any system of information collection and storage, while in other cases RFID does raise its own novel challenges. Thus, this document does not reflect a point-by-point application of the OECD Guidelines, but rather focuses on specific challenges posed by RFID technology when applying certain aspects of fair information practices in the areas of notice, choice and consent, onward transfers, access and security.

These guidelines are designed to be sufficiently flexible so as to apply across a range of

industry sectors. Their success will depend upon companies making sound decisions about how they are best implemented and maintained. We expect that some companies may, for example, provide notice in a way that differs markedly from the way in which others do, based upon the nature of a given RFID application, the company's business model, and the environment in which both are deployed. Thus, a retailer may provide notice in a manner different from the way in which a home health care system provider provides notice. It should also be noted that this document assumes that companies deploying RFID will comply with existing laws and regulations related to information collection and sharing.

This document is targeted at commercial and private sector consumer applications. It is not intended to address government applications of RFID or applications of RFID deployed internally by companies in the employer-employee context, business-to-business applications, or uses of RFID for personal identification systems.

The participants in this initiative are keenly aware that this guidance may need to be revisited as RFID technology continues to develop and as more is learned about its impact on privacy. For example, one issue that garners significant attention is whether and to what extent RFID practically could be used to track an individual's location. Issues such as location tracking, as well as others, will warrant reconsideration as the technology evolves and new applications emerge. As RFID technology and applications are developing rapidly, the drafters intend to review and refine the guidelines as the private sector gains experience in their implementation.

Finally, the purpose of this activity has been to attempt to define best practices. The process has involved extensive discussion about both principles and practicalities that entailed healthy give and take among parties representing widely different perspectives. Thus, while not every participant necessarily supports every recommendation, the final product represents a collective judgment that these guidelines should provide a workable set of practices that allow for realization of the potential benefits of RFID without undermining the privacy of consumers.

These guidelines are not designed as a blueprint for legislation. The participants in the drafting process believe that widespread and voluntary adoption of these guidelines, combined with a major effort at consumer education, would dramatically improve the environment for the use of RFID.

Best Practices ***Notice***

Consumers should be provided with clear, conspicuous and concise notice when information, including location information, is collected through an RFID system and linked, or is intended by a commercial entity to become linked, to an individual's personal information either on the RFID tag itself or through a database. (For purposes of this document, this information shall be referred to as "linked information.")

- In either of these situations, the notice should specify:
 - the presence of RFID involving linked information;
 - the purposes for which the linked information is being collected;
 - how linked information will be used;
 - whether the linked information is used solely to enable the functioning of the device the consumer has purchased or delivery of the service for which the consumer has contracted, or to facilitate completion of the commercial business's transaction with the consumer;
 - whether the linked information may be used for additional or subsequent uses, such as marketing;
 - that if the linked information is to be used for such additional or subsequent

- uses, it will be used only consistent with the consumer's choice; and
- o whether the RFID tag can be removed or deactivated.
 - Whenever practicable, notice of the use of the RFID system to collect linked information should be provided prior to the completion of the transaction through which the good or service is obtained. In cases where there is no good or service obtained, then notice should be provided prior to the association of PII with information collected through the RFID system.

Responsibility for providing notice lies with the company having the direct relationship with the consumer.^[4]

When the information on the RFID tag, such as the tag number, is not directly associated with an identified individual, in order to create a link between the information on the RFID tag and an identified individual it is usually necessary to access a series of databases or other

information repositories.^[5] It is the responsibility of the commercial entities involved in the deployment of RFID systems to exercise judicious discretion in determining whether the degree of linkage is sufficiently close so as to consider the information collected to be linked information.

- In general, commercial entities should consider the likelihood of the linkage between PII and/or location information and the RFID identification number in determining whether notice is necessary. In making this determination, a company should give good faith consideration to the following:
 - o The likelihood of a single individual or entity having access to all elements of information and databases necessary to effect the linkage;
 - o The number of elements of information required to effect the linkage;
 - o The security measures surrounding the information;
 - o Legal protections or safeguards applicable to accessing or using the information; and
 - o The sensitivity of the information linked to the RFID data.
- As the attenuation between the PII and RFID identification number becomes greater, the risk to privacy arguably decreases, and the requirement for notice becomes increasingly subject to discretion.

Consumers should be notified when entering a commercial or public environment where RFID technology is in use. Wherever practicable, individual RFID readers should be identified as such.

Companies should engage in annual internal assessments to confirm that the posted notices accurately reflect their information practices related to RFID systems.

Companies deploying RFID technology are strongly encouraged to participate in consumer education efforts that provide background and context to consumers regarding PII collection enabled by RFID, and to raise public awareness of the technology and its benefits.

Choice and Consent

Choice pertains to the use of the RFID technology, and to the uses of linked information collected on the RFID tag or associated with the RFID number.

Consistent with the guidelines for notice, consumers should be clearly notified when there is an opportunity to exercise choice with respect to the use of the RFID technology or with respect to the use of linked information collected on the RFID tag or associated with the RFID

number.

Consumers should be offered such choice before the conclusion of the transaction to obtain a good or service, wherever practicable, so that, when coupled with robust notice, consumers are given the tools to effectively exercise their choice with respect to the use of RFID technology.

- Consumer choice about the use of the RFID technology
 - The consumer should be informed in a clear, conspicuous and concise manner when there is an option to remove, de-activate, or destroy a tag and, when there is, how that option may be exercised.
 - In such instances, the option to remove, de-activate or destroy an RFID tag must be readily available to the consumer and readily exercised.
 - By exercising choice to remove, de-activate or destroy a tag, the consumer's ability to return an item, benefit from a warranty, or benefit from the protections of local law should not be compromised. Exercising this choice should not result in any damage or defect to a product.
- Choice and consent about the uses of PII collected on the tag or associated with the RFID number.
 - In some cases, linked information is used solely to enable the functioning of the device^[6] the consumer has purchased or delivery of the service for which the consumer has contracted, or to facilitate completion of the commercial business's transaction with the consumer. In such instances, the consumer should be informed of the existence of the RFID tag (consistent with the provision on notice), but the consumer's consent or choice about the use of PII need not be solicited.

When linked information collected and associated with an RFID number is used for purposes other than to enable the functioning of the device the consumer has purchased or delivery of the service for which the consumer has contracted, or to facilitate completion of the commercial business's transaction with the consumer (such as marketing or sharing linked information with a third party for some other purpose), the consumer should be so notified and given the opportunity to consent to such uses.

Responsibility for providing choice lies with the company having the direct relationship with the consumer. ^[7]

Onward Transfer

Wherever practicable, a company collecting PII via the deployment of an RFID system should include in its contracts provisions requiring that the companies with which it shares PII, including its affiliates, subsidiaries and any third party companies, will afford that shared data a level of protection consistent with or greater than that afforded by the company collecting the information.

Access

When PII is maintained on the tag itself, individuals should have reasonable access to that information.

If an individual receives an adverse decision based on linked information^[8] about him or herself, that individual should have reasonable access to that information. As a general principle, it is desirable to provide consumers with, if cost effective and efficient, reasonable access to personally identifiable information, including location information, collected using RFID technology.

In the above situations, appropriate access should be provided by the entity interfacing with the individual.

When access is offered it should be easily and readily available to the consumer.

Government access to linked information should be allowed only upon service of process under applicable law.

Security

Companies should exercise reasonable and appropriate efforts to secure RFID tags, readers and, whenever applicable, any corollary linked information from unauthorized reading, logging and tracking, including any network or database transmitting or containing that information and radio transmissions between readers and tags. In addition, companies should exercise reasonable and appropriate efforts to secure the linked information from unauthorized access, loss or tampering.

In so doing, companies should establish and maintain an information security program in keeping with industry standards, appropriate to the amount and sensitivity of the information stored on their system. Such a security program should include processes to identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of linked information, and address those risks.

To enhance the security of information that may be transmitted between tags and reader, companies should, to the extent practicable, minimize the information stored on RFID tags themselves.

American Library Association

aQuantive, Inc.

Center for Democracy & Technology

Cisco Systems Inc.

Eli Lilly and Company

IBM

Intel Corporation

Elliot E. Maxwell, RFID consultant and Fellow, Communications Program, Johns Hopkins University

Microsoft Corporation

National Consumers League

The Procter & Gamble Company

Verisign

Visa U.S.A.
