

**CS FOR SENATE BILL NO. 249(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered: 4/8/10**

**Referred: Rules**

**Sponsor(s): SENATOR ELLIS**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to official action by electronic transmission, to records, and to public**  
2 **records."**

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

4 **\* Section 1.** AS 11.81.900(b)(53) is amended to read:

5 (53) "public record"

6 **(A)** means **each of the following that is** [A DOCUMENT,  
7 PAPER, BOOK, LETTER, DRAWING, MAP, PLAT, PHOTO,  
8 PHOTOGRAPHIC FILE, MOTION PICTURE, FILM, MICROFILM,  
9 MICROPHOTOGRAPH, EXHIBIT, MAGNETIC OR PAPER TAPE,  
10 PUNCHED CARD OR OTHER DOCUMENT OF ANY OTHER  
11 MATERIAL, REGARDLESS OF PHYSICAL FORM OR  
12 CHARACTERISTIC,] developed or received under law or in connection with  
13 the transaction of official business and preserved or **required by law to be**  
14 **preserved** [APPROPRIATE FOR PRESERVATION] by **an** [ANY] agency, **a**

1 municipality, or a [ANY] body subject to the open meeting provision of  
 2 AS 44.62.310 [,] as evidence of the organization, function, policies, decisions,  
 3 procedures, operations, or other activities of that agency, municipality, or  
 4 body [THE STATE OR MUNICIPALITY] or because of the informational  
 5 value in it:

6 (i) a document, paper, book, letter, drawing, map,  
 7 plat, photo, photographic file, motion picture, film, microfilm,  
 8 microphotograph, exhibit, magnetic or paper tape, punched card,  
 9 electronic record, or other document of any other material,  
 10 regardless of physical form or characteristic; and

11 (ii) [; IT ALSO INCLUDES] staff manuals and  
 12 instructions to staff that affect the public;

13 (B) does not include

14 (i) proprietary software programs;

15 (ii) library and museum material developed or  
 16 acquired and preserved solely for reference, historical, or  
 17 exhibition purposes;

18 (iii) extra copies of documents preserved solely for  
 19 convenience of reference;

20 (iv) stocks of publications and processed documents;

21 or

22 (v) material that is available for public inspection  
 23 during state business hours in an agency's office or in a public  
 24 library, unrestricted records in the custody of the state archivist or  
 25 the state recorder, records relating to a public agency's regularly  
 26 conducted activities, including adjudicatory activities, that are  
 27 recorded and open to the public, books in a public library, statutes,  
 28 published court opinions, published legal opinions, published  
 29 regulations, magazines, journals, state land plats, published  
 30 portions of case files maintained by the department of natural  
 31 resources, unrestricted motor vehicle records, and published

1 treatises;

2 \* **Sec. 2.** AS 39.25 is amended by adding a new section to read:

3 **Sec. 39.25.165. Official action through private electronic transmission**  
 4 **systems prohibited.** (a) When sending or receiving a written electronic transmission  
 5 for the purpose of taking or withholding official action, a public officer shall use a  
 6 system that is operated and maintained by the state or under a contract with the state,  
 7 unless

8 (1) it is not feasible to use that system;

9 (2) there is a compelling reason for the transmission to occur without  
 10 delay; and

11 (3) the material transmitted is not confidential by law.

12 (b) An electronic transmission under (a) of this section is a public record  
 13 under AS 40.25.

14 (c) The prohibition under (a) of this section does not apply to a public officer  
 15 who is taking or withholding official action during a public safety emergency.

16 (d) In this section,

17 (1) "official action" means advice, participation, or assistance,  
 18 including for example, a recommendation, decision, approval, disapproval, vote, or  
 19 other similar action, including inaction, by a public officer;

20 (2) "public officer" means

21 (A) a permanent, probationary, seasonal, temporary,  
 22 provisional, or nonpermanent employee of an agency, whether in the classified,  
 23 partially exempt, or exempt service;

24 (B) a member of a board or commission; and

25 (C) a state officer designated by the governor to act as trustee  
 26 of the trust, or a person to whom the trustee has delegated trust duties; in this  
 27 paragraph, "trust" has the meaning given in AS 37.14.450.

28 \* **Sec. 3.** AS 40.21.150(6) is amended to read:

29 (6) "record"

30 (A) means each of the following that is [ANY DOCUMENT,  
 31 PAPER, BOOK, LETTER, DRAWING, MAP, PLAT, PHOTO,

1 PHOTOGRAPHIC FILE, MOTION PICTURE FILM, MICROFILM,  
 2 MICROPHOTOGRAPH, EXHIBIT, MAGNETIC OR PAPER TAPE,  
 3 PUNCHED CARD, ELECTRONIC RECORD, OR OTHER DOCUMENT OF  
 4 ANY OTHER MATERIAL, REGARDLESS OF PHYSICAL FORM OR  
 5 CHARACTERISTIC,] developed or received under law or in connection with  
 6 the transaction of official business and preserved or **required by law to be**  
 7 **preserved** [APPROPRIATE FOR PRESERVATION] by an agency or a  
 8 political subdivision **of the state** [,] as evidence of the organization, function,  
 9 policies, decisions, procedures, operations, or other activities of the state or  
 10 political subdivision or because of the informational value in **it**;

11 **(i) a document, paper, book, letter, drawing, map,**  
 12 **plat, photo, photographic file, motion picture, film, microfilm,**  
 13 **microphotograph, exhibit, magnetic or paper tape, punched card,**  
 14 **electronic record, or other document of any other material,**  
 15 **regardless of physical form or characteristic; and**

16 **(ii) staff manuals and instructions to staff that affect**  
 17 **the public;**

18 **(B)** [THEM; THE TERM] does not include

19 **(i) proprietary software programs;**

20 **(ii) library and museum material developed or acquired**  
 21 **and preserved solely for reference, historical, or exhibition purposes;**

22 **(iii) [,] extra copies of documents preserved solely for**  
 23 **convenience of reference;**

24 **(iv) [, OR] stocks of publications and processed**  
 25 **documents; or**

26 **(v) material that is available for public inspection**  
 27 **during state business hours in an agency's office or in a public**  
 28 **library, including unrestricted records in the custody of the state**  
 29 **archivist or the state recorder, records relating to a public agency's**  
 30 **regularly conducted activities, including adjudicatory activities,**  
 31 **that are recorded and open to the public, books in a public library,**

1 statutes, published court opinions, published legal opinions,  
 2 published regulations, magazines, journals, state land plats,  
 3 published portions of case files maintained by the department of  
 4 natural resources, unrestricted motor vehicle records, and  
 5 published treatises;

6 \* **Sec. 4.** AS 40.25.110(b) is amended to read:

7 (b) Except as otherwise provided in this section, the fee for copying public  
 8 records may not exceed the cost of materials and supplies used to duplicate the  
 9 records [STANDARD UNIT COST OF DUPLICATION] established by the public  
 10 agency and may not include the labor costs or overhead costs associated with the  
 11 duplication.

12 \* **Sec. 5.** AS 40.25.110(c) is amended to read:

13 (c) If the production of records for one requester in a calendar month exceeds  
 14 five person-hours and the agency determines that the request is by a corporation  
 15 other than a news media corporation, is unduly burdensome, or is for a  
 16 commercial purpose, the public agency shall require the requester to pay the  
 17 personnel costs required during the month to complete the search and copying tasks.  
 18 The personnel costs may not exceed the actual salary and benefit costs for the  
 19 personnel time required to perform the search and copying tasks. The requester shall  
 20 pay the fee before the records are disclosed, and the public agency may require  
 21 payment in advance of the search. If the agency determines that the request is  
 22 unjustifiably burdensome, it shall suspend searching and copying for a period of  
 23 10 business days with notice to requestor, help the requestor revise the request,  
 24 and reconsider the agency's determination. If the agency determines after  
 25 reconsideration that the request is justifiable, the agency may not require the  
 26 requestor to pay personnel costs under this subsection.

27 \* **Sec. 6.** AS 40.25.115(a) is amended to read:

28 (a) Notwithstanding AS 40.25.110(b) and (d) [AS 40.25.110(b) - (d)] to the  
 29 contrary, upon request and payment of a fee established under (b) of this section, a  
 30 public agency may provide electronic services and products involving public records  
 31 to members of the public. A public agency is encouraged to make information

1 available in usable electronic formats to the greatest extent feasible. The activities  
 2 authorized under this section may not take priority over the primary responsibilities of  
 3 a public agency.

4 \* **Sec. 7.** AS 40.25.125 is repealed and reenacted to read:

5 **Sec. 40.25.125. Enforcement; crimes.** (a) Whether acting independently or in  
 6 concert with another, a person who unlawfully impairs or attempts to impair the verity,  
 7 legibility, or availability of a public record is subject to

8 (1) prosecution for a criminal offense under AS 11.56.815 and  
 9 11.56.820;

10 (2) injunction by order of the superior court.

11 (b) A person may seek injunctive relief under (a) of this section without  
 12 exhausting that person's remedies under AS 40.25.123 and 40.25.124.

13 \* **Sec. 8.** AS 40.25.220(3) is amended to read:

14 (3) **"public record" or "public records"**

15 **(A)** means **each of the following** [BOOKS, PAPERS, FILES,  
 16 ACCOUNTS, WRITINGS, INCLUDING DRAFTS AND  
 17 MEMORIALIZATIONS OF CONVERSATIONS, AND OTHER ITEMS,  
 18 REGARDLESS OF FORMAT OR PHYSICAL CHARACTERISTICS,] that **is**  
 19 [ARE] developed or received **under law or in connection with the**  
 20 **transaction of official business** by a public agency [, OR BY A PRIVATE  
 21 CONTRACTOR FOR A PUBLIC AGENCY,] and [THAT ARE] preserved **or**  
 22 **required by law to be preserved** [FOR THEIR INFORMATIONAL VALUE  
 23 OR] as evidence of the organization, **function, policies, decisions,**  
 24 **procedures, operations, or other activities** [OR OPERATION] of the public  
 25 agency **or because of the informational value in it:**

26 **(i) a document, paper, book, letter, drawing, map,**  
 27 **plat, photo, photographic file, motion picture, film, microfilm,**  
 28 **microphotograph, exhibit, magnetic or paper tape, punched card,**  
 29 **electronic record, or other document of any other material,**  
 30 **regardless of physical form or characteristic; and**

31 **(ii) staff manuals and instructions to staff that affect**

1 **the public;**

2 **(B)** [; "PUBLIC RECORDS"] does not include

3 **(i)** proprietary software programs;

4 **(ii)** **library and museum material developed or**  
5 **acquired and preserved solely for reference, historical, or**  
6 **exhibition purposes;**

7 **(iii)** **extra copies of documents preserved solely for**  
8 **convenience of reference;**

9 **(iv)** **stocks of publications and processed documents;**

10 **or**

11 **(v)** **material that is available for public inspection**  
12 **during state business hours in an agency's office or in a public**  
13 **library, including unrestricted records in the custody of the state**  
14 **archivist or the state recorder, records relating to a public agency's**  
15 **regularly conducted activities, including adjudicatory activities,**  
16 **that are recorded and open to the public, books in a public library,**  
17 **statutes, published court opinions, published legal opinions,**  
18 **published regulations, magazines, journals, state land plats,**  
19 **published portions of case files maintained by the department of**  
20 **natural resources, unrestricted motor vehicle records, and**  
21 **published treatises;**