

SENATE BILL NO. 142

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY SENATORS WIELECHOWSKI, Coghill

Introduced: 1/27/14

Referred: Community and Regional Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the powers of municipalities; prohibiting state and municipal
2 agencies from using assets to assist a federal agency in collecting certain telephone
3 records or electronic data without a warrant; prohibiting state and municipal agencies,
4 officers, employees, and agents from cooperating with a federal agency in collecting
5 certain telephone records or electronic data without a warrant; and providing for an
6 effective date."

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

8 * **Section 1.** AS 29.10.200 is amended to read:

9 **Sec. 29.10.200. Limitation of home rule powers.** Only the following
10 provisions of this title apply to home rule municipalities as prohibitions on acting
11 otherwise than as provided. These provisions supersede existing and prohibit future
12 home rule enactments that provide otherwise:

13 (1) AS 29.05.140 (transition);

- 1 (2) AS 29.06.010 (change of municipal name);
- 2 (3) AS 29.06.040 - 29.06.060 (annexation and detachment);
- 3 (4) AS 29.06.090 - 29.06.170 (merger and consolidation);
- 4 (5) AS 29.06.190 - 29.06.420 (unification of municipalities);
- 5 (6) AS 29.06.450 - 29.06.530 (dissolution);
- 6 (7) AS 29.10.100 (charter amendment);
- 7 (8) AS 29.20.010 (conflict of interest);
- 8 (9) AS 29.20.020 (meetings public);
- 9 (10) AS 29.20.050 (legislative power);
- 10 (11) AS 29.20.060 - 29.20.120 (assembly composition and
- 11 apportionment);
- 12 (12) AS 29.20.140 (qualifications of members of governing bodies);
- 13 (13) AS 29.20.150 (term of office);
- 14 (14) AS 29.20.220 (executive power);
- 15 (15) AS 29.20.270(e) (ordinance veto by mayor);
- 16 (16) AS 29.20.630 (prohibited discrimination);
- 17 (17) AS 29.20.640 (reports);
- 18 (18) AS 29.25.010(a)(10) (municipal exemption on contractor bond
- 19 requirements);
- 20 (19) AS 29.25.050 (codification);
- 21 (20) AS 29.25.060 (resolutions);
- 22 (21) AS 29.25.070(e) (notices of certain civil actions);
- 23 (22) AS 29.25.074 (surcharge);
- 24 (23) AS 29.25.080 (breast-feeding);
- 25 (24) AS 29.26.030 (notice of elections);
- 26 (25) AS 29.26.050 (voter qualification);
- 27 (26) AS 29.26.250 - 29.26.360 (recall);
- 28 (27) AS 29.35.020 (extraterritorial jurisdiction);
- 29 (28) AS 29.35.030 (eminent domain);
- 30 (29) AS 29.35.050(a) - (c) (garbage and solid waste services);
- 31 (30) AS 29.35.055 (local air quality control program);

- 1 (31) AS 29.35.060 (franchises and permits);
- 2 (32) AS 29.35.070 (public utilities);
- 3 (33) AS 29.35.080 (alcoholic beverages);
- 4 (34) AS 29.35.090(b) (certain vacations of rights-of-way prohibited);
- 5 (35) AS 29.35.120 (post audit);
- 6 (36) AS 29.35.125 (fees for police protection services);
- 7 (37) AS 29.35.131 - 29.35.137 (enhanced 911 system);
- 8 (38) AS 29.35.141 (regulation of radio antennas);
- 9 (39) AS 29.35.144 (sprinkler fire protection systems);
- 10 (40) AS 29.35.145 (regulation of firearms and knives);
- 11 (41) AS 29.35.160 (education);
- 12 (42) AS 29.35.170(b) (assessment and collection of taxes);
- 13 (43) AS 29.35.180(b) (land use regulation);
- 14 (44) AS 29.35.250 (cities inside boroughs);
- 15 (45) AS 29.35.260 (cities outside boroughs);
- 16 (46) AS 29.35.340 (acquisition of areawide power);
- 17 (47) AS 29.35.450 (service areas);
- 18 (48) AS 29.35.500 - 29.35.590 (hazardous materials and wastes);
- 19 (49) AS 29.40.160(a) - (c) (title to vacated areas);
- 20 (50) AS 29.40.200 (subdivisions of state land);
- 21 (51) AS 29.45.010 - 29.45.560 and 29.45.800 (property taxes);
- 22 (52) AS 29.45.650(c), (d), (e), (f), (i), (j), and (k) (sales and use tax);
- 23 (53) AS 29.45.700(d), (e), and (g) (sales and use tax);
- 24 (54) AS 29.45.750 (taxation of mobile telecommunications);
- 25 (55) AS 29.45.810 (exemption from municipal taxation);
- 26 (56) AS 29.46.010(b) (exemption from municipal assessment);
- 27 (57) AS 29.47.200(b) (security for bonds);
- 28 (58) AS 29.47.260 (revenue bonds);
- 29 (59) AS 29.47.470 (air carriers);
- 30 (60) AS 29.65 (general grant land);
- 31 (61) AS 29.71.040 (procurement preference for state agricultural and

1 fisheries products);

2 (62) AS 29.71.050 (procurement preference for recycled Alaska
3 products);

4 **(63) AS 29.35.081 (collection or use of telephone records or**
5 **electronic data obtained without a warrant).**

6 * **Sec. 2.** AS 29.35 is amended by adding a new section to read:

7 **Sec. 29.35.081. Prohibition against cooperation with federal agencies**
8 **engaged in collection of telephone records or electronic data.** (a) A municipality or
9 an officer, employee, or agent of a municipality may not

10 (1) assist, cooperate with, or participate with a federal agency in the
11 collection of

12 (A) electronic data under a federal statute, regulation, rule, or
13 order when the collection of electronic data is undertaken without a search
14 warrant that particularly describes the person, place, and thing to be searched
15 or seized; or

16 (B) telephone records under a federal statute, regulation, rule,
17 or order when the collection of the telephone records is undertaken without a
18 search warrant that particularly describes the person, place, and thing to be
19 searched or seized, or in another manner that is inconsistent with state law; or

20 (2) use, in a criminal investigation or prosecution, records or data that
21 are provided by a federal agency or an officer or employee of a federal agency that
22 were collected by the federal agency without a search warrant or in another manner
23 inconsistent with state law as described in (1) of this subsection.

24 (b) In this section, "electronic data" includes electronic mail and text
25 messages.

26 * **Sec. 3.** AS 44.99.040(a) is amended to read:

27 (a) A state or municipal agency may not use or authorize the use of an asset to
28 implement or aid in

29 **(1)** the implementation of a requirement of

30 **(A)** [(1)] an order of the President of the United States, a
31 federal regulation, or a law enacted by the United States Congress that is

1 applied to

2 (i) [(A)] infringe on a person's right, under the Second
3 Amendment to the Constitution of the United States, to keep and bear
4 arms;

5 (ii) [(B)] deny a person a right to due process, or a
6 protection of due process, that would otherwise be available to the
7 person under the Constitution of the State of Alaska or the Constitution
8 of the United States; or

9 (B) [(2)] P.L. 109-13, Division B (REAL ID Act of 2005);

10 (2) the collection by a federal agency of electronic data without a
11 search warrant; in this paragraph, "electronic data" includes electronic mail and
12 text messages; or

13 (3) the collection by a federal agency of telephone records without
14 a search warrant, unless the records are collected in a manner consistent with
15 state law.

16 * **Sec. 4.** AS 44.99 is amended by adding a new section to article 1 to read:

17 **Sec. 44.99.050. Prohibition against cooperation with federal agencies**
18 **engaged in collection of telephone records or electronic data.** (a) A state agency or
19 an officer, employee, or agent of a state agency may not

20 (1) assist, cooperate with, or participate with a federal agency in the
21 collection of

22 (A) electronic data under a federal statute, regulation, rule, or
23 order when the collection of electronic data is undertaken without a search
24 warrant that particularly describes the person, place, and thing to be searched
25 or seized; or

26 (B) telephone records under a federal statute, regulation, rule,
27 or order when the collection of the telephone records is undertaken without a
28 search warrant that particularly describes the person, place, and thing to be
29 searched or seized, or in another manner that is inconsistent with state law; or

30 (2) use, in a criminal investigation or prosecution, records or data that
31 are provided by a federal agency or an officer or employee of a federal agency that

1 were collected by the federal agency without a search warrant or in another manner
2 inconsistent with state law as described in (1) of this subsection.

3 (b) In this section, "electronic data" includes electronic mail and text
4 messages.

5 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).